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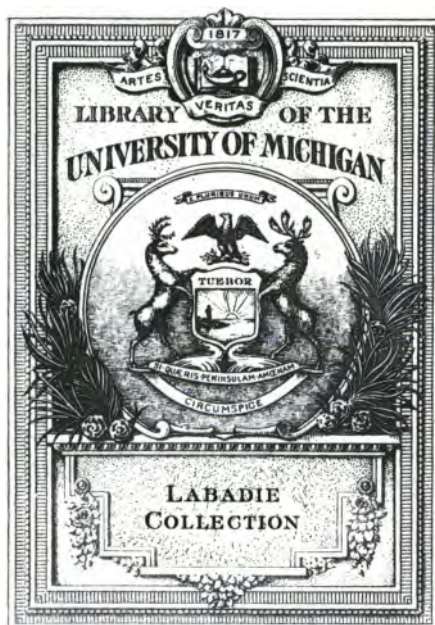
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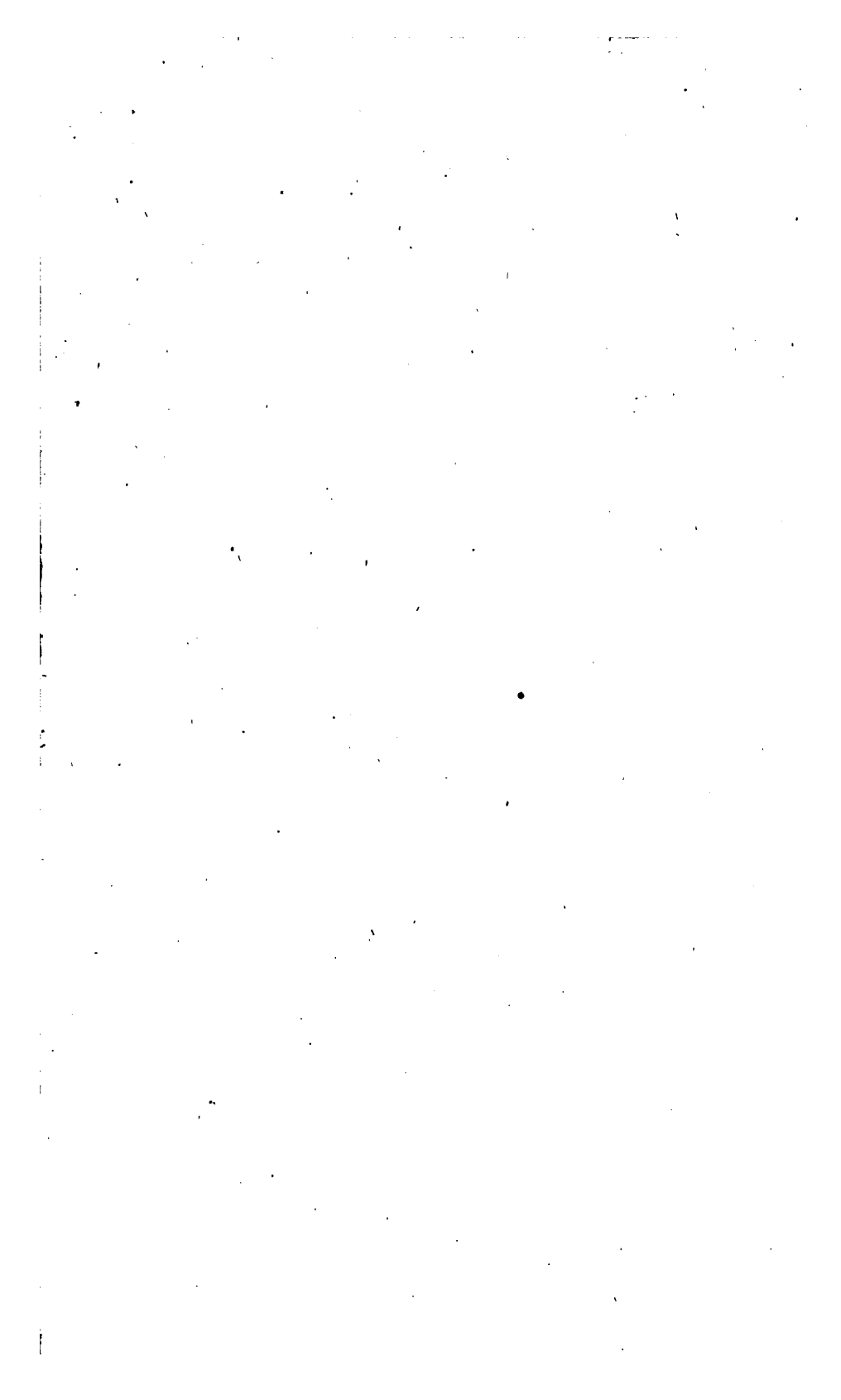


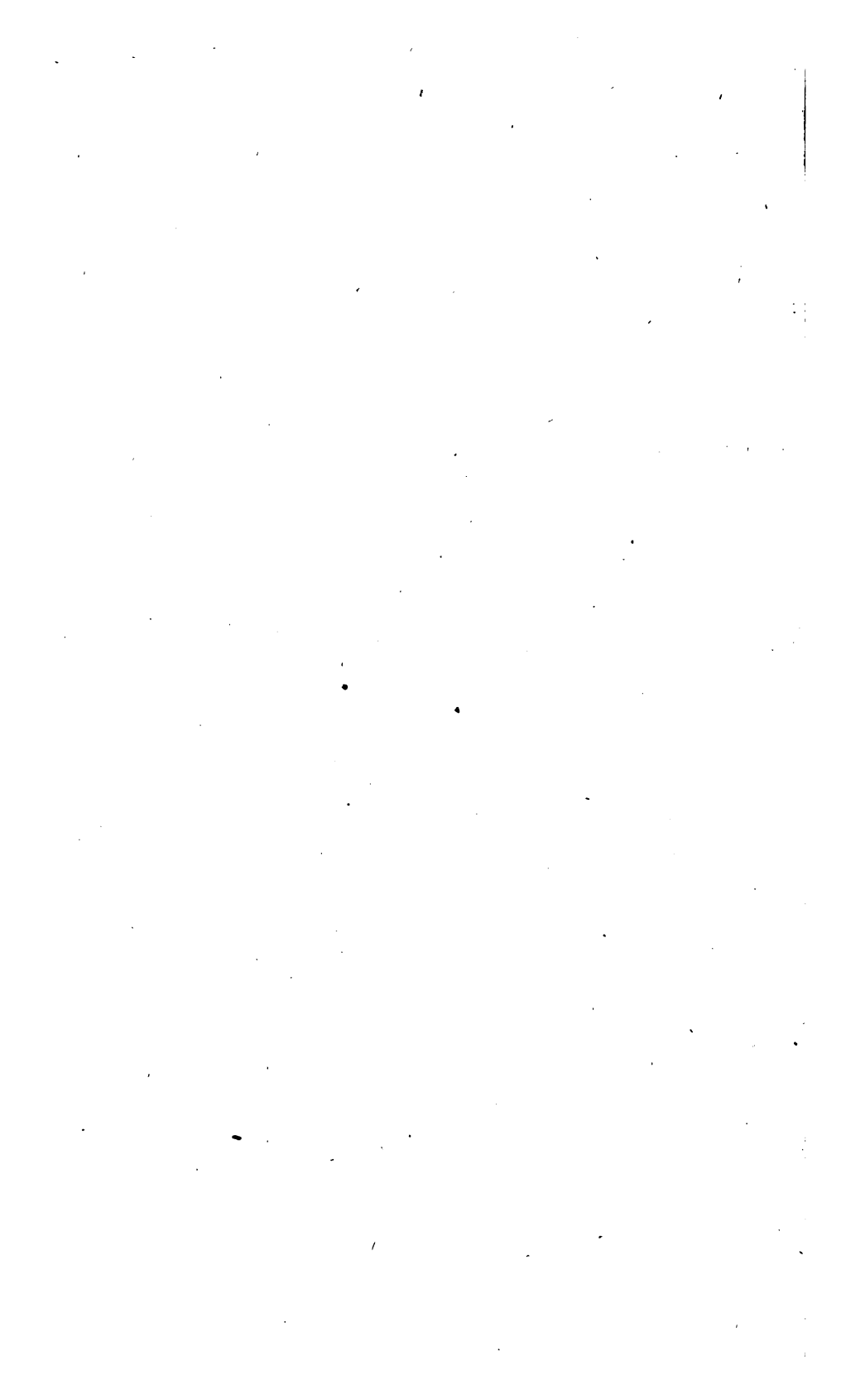
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THE GIFT OF 1934
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A

S P E E C H

DELIVERED BEFORE THE

MUNICIPAL COURT

OF THE

CITY OF BOSTON,

IN DEFENCE OF

ABNER KNEELAND,

ON AN

INDICTMENT FOR BLASPHEMY.

JANUARY TERM, 1834.

BY ANDREW DUNLAP.

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Entered according to act of Congress, in the year 1834,
By ABNER KNEELAND,
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THE MASSACHUSETTS ACT AGAINST BLASPHEMY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same. That if any person shall wilfully blaspheme the holy name of God, by denying, cursing, or contumeliously reproaching God, his creation, government, or final judging of the world, or by cursing, or reproaching Jesus Christ, or the Holy Ghost, or by cursing, or contumeliously reproaching the Holy Word of God, that is, the canonical scriptures, contained in the books of the Old and New Testaments, or by exposing them, or any part of them, to contempt and ridicule; which books are as follows: Genesis, Exodus, Leviticus, Numbers, Deuteronomy, Joshua, Judges, Ruth, Samuel, Samuel, Kings, Kings, Chronicles, Chronicles, Ezra, Nehemiah, Esther, Job, Psalms, Proverbs, Ecclesiastes, the Song of Solomon, Isaiah, Jeremiah, Lamentations, Ezekiel, Daniel, Hosea, Joel, Amos, Obadiah, Jonah, Micah, Nahum, Habakkuk, Zephaniah, Haggai, Zechariah, Malachi, Matthew, Mark, Luke, John, Acts, Romans, Corinthians, Corinthians, Galatians, Ephesians, Philippians, Colossians, Thessalonians, Thessalonians, Timothy, Timothy, Titus, Philemon, Hebrews, James, Peter, Peter, John, John, John, Jude, Revelation; every person so offending shall be punished by imprisonment not exceeding twelve months, by sitting in the pillory, by whipping, or by sitting on the gallows, with a rope about the neck, or binding to the good behavior, at the discretion of the Supreme Judicial Court before whom the conviction may be, according to the aggravation of the offence. [July 3, 1782.]

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9-17-52

SPEECH.

May it please your Honor and you gentlemen of the Jury.

After an opening of considerable length, and containing principles of an extraordinary nature in this land of civil and religious liberty, we have at length arrived at the threshold of the defence of the prisoner. I had thought till now, that our Constitution, laws, and practice in criminal causes, so far protected a party arraigned for an offence, as to require that some evidence should be produced to support the charges against him, before an argument to convict, could be addressed to the jury, by whom he is to be tried, not according to public prejudice, or excitement; but as your oath declares your duty, according to the evidence. I had thought, it was the duty of the Government, to confine the opening of the cause to a simple statement of the nature of the prosecution, of the points of law which would be urged, and the evidence, which would be adduced in its support. I supposed that the guilt of the prisoner should be proved, and not assumed, and that the whole evidence, on which the proof of that guilt rested, should be laid before the court and the jury, before any attempt could be rightfully made, to excite their feelings or influence public opinion against him. I have read indeed of one tribunal, where the rule was to punish first, and hear afterwards. It was the court which was supposed by the great poet of the classic age of Rome, to sit in the infernal regions, and its principle of judgment, "castigatque, auditque," was well suited, to the tribunal, and the place where it was established. But a different rule prevails in our courts of justice, where it is the fortune, or the fate of the prisoner to be tried. Here the accused is presumed to be innocent, until he shall be proved to be guilty. I know it is the practice of the English courts, where the defendant in most criminal causes of a high degree, is not allowed the privilege of counsel, for the King's counsel particularly in political causes, to commence the trial, with an argument against the

accused, as though the charges in the indictment were substantiated, before the production of the evidence. But this practice, which gives too great an advantage on the side of the prosecution, has not been adopted in the conducting of criminal causes in the courts of this country. Yet if this practice is to be introduced in this country, this cause surely is the fitting occasion for its introduction. In this cause we hear proclaimed the high toned and dangerous doctrines of the British government, in relation to civil and religious liberty, and we are as a matter of course, to expect the introduction of the practices of the British courts, by which those arbitrary doctrines, flowing from the corrupt union of church and state, are sustained in those courts. But I will not further complain of the course pursued in the opening of this prosecution, relying as I do upon the patience, candor and justice, with which the defence in this highly important cause, will be heard by the court and the jury, even if that defence should detain us here, till our heads shall be grown as grey as that of the defendant, who now stands arraigned before a criminal tribunal, for the first time in his life, and with full and uncontradicted evidence of his irreproachable moral character, given in his behalf by witnesses, who are adverse to him in religious opinions, and whose standing as moral and religious men, is of the highest character in our community.

I could have wished that the duty of conducting this defence, important to the prisoner, and to every citizen of this republic, had not devolved upon me. I was fully aware of the great labor it must require, of the force of the feeling which the defendant has to encounter in this community, distinguished for its attachment to religion, and of the prejudice which ignorance or bigotry might rouse even against the counsel, appearing merely in the way of his profession, in the defence of this prosecution. But when my professional services were required by the defendant, I thought it would be an affectation of being above my profession, or a dereliction of professional independence, responsibility, and duty, should I decline his call to defend him. The Constitution, of our renowned Commonwealth, secures to a person accused of an offence, in all cases the right to "be fully heard by himself, or his counsel at his election" and as the Court and the Jury have no right to prejudge him, or withhold from him his constitutional privileges, so neither had I, when called upon to act as his counsel. In the celebrated case of Carllie, reported in *Barnewall and Alderson's Reports*, he was indicted, for an attack upon the

christian religion, far more offensive to pious minds, than the articles which have occasioned the present prosecution. Yet he was defended by Sir Thomas Denman, one of the most eminent advocates of the English Bar, and now the Chief Justice of the Common Pleas of England. This distinguished lawyer, whose fame has expanded far beyond the limits of his own country, was also the Solicitor General to the late unfortunate Queen of Great Britain, and one of her able defenders on her trial before the House of Lords, when her Royal husband, who had sworn at the Altar to love and to cherish her, the Head of the Church of England, was her accuser. Sir Thomas Denman did not hesitate, in the discharge of his professional duty, in a country where there is an established religion, where there is a union of Church and State, that combination of the Altar and the Throne against the rights of man, to defend Carline against an indictment for blasphemy. If this great man, who had so much to lose in undertaking an unpopular defence, did not shrink from an independent discharge of professional duty, why should a humble member of the same profession, who has comparatively nothing of fame to put in hazard, fear to meet the responsibilities of his calling, when the Constitution of his country, secures to all persons accused of offences, the benefit of counsel? It is not the cause, but the manner of conducting the cause, which is to bring discredit, or shed honor upon the advocate.

I appear, not to vindicate the doctrines, but to maintain the rights of the accused, and to throw over him the shield of the law, and the Ægis of the Constitution. I come not to defend his doctrines. They are different from those in which I was educated, and which I will teach to my children. They would deprive me of the dearest consolations of life, in the midst of the ills which flesh is heir to, and extinguish the brightest hopes, which the soul of man can cherish. I could not love my dearest relatives and friends, were I assured that they were but organized clods of the valley, and that their minds and affections, were to sink forever "in the ground." A belief in those doctrines would, as I have been taught to believe, destroy all desire of moral and mental improvement, and if this stage of existence be not the commencement of a career of virtue and knowledge, this life and the proud distinction of man in this creation would not be worth the possession, for it is the hope of a glorious immortality, which elevates man above the consideration of mere physical enjoyments, and creates the strongest impulse to virtuous conduct, and the most powerful incentive to intellectual improvement.

Having thus declared my dissent from the doctrines of the defendant, and I could not have engaged in this cause, without reserving the right of saying thus much; I shall not consider myself bound to pour forth denunciations against him. That would be betraying, not defending his cause, and meanly seeking a shelter for myself, from the misunderstanding or misrepresentation to which his counsel may be exposed, by retreating behind my client. My post is before him, and there I will stand, interposing for his defence against this prosecution, the protection of the law and the Constitution. I claim for the defendant the same legal right to the enjoyment, and the maintenance of his opinions, by his voice and his pen, which we claim for ourselves, as our political birthright guaranteed by our glorious Revolution, and proclaimed in our immortal Bill of Rights. In defending the right of free inquiry, subject to no check from the civil power, in matters of religion, I feel that I am discharging my duty as a citizen, as well as a professional advocate. The rights of conscience in relation to religious belief, cannot be made subject to the jurisdiction of human legislators, and tribunals. Matters of conscience are affairs betwixt a man and his God, not a man and his weak, erring, ignorant fellow man. If the defendant falls by this prosecution, another less obnoxious dissenter from the prevalent doctrine of the country, may be the next victim, and our Judges and Juries, will soon resolve themselves into tribunals, to test, the correctness of the creed of others, by the standard of their own belief. I was born and educated among christians professing those liberal opinions in religion, which were taught by Priestley and Belsham in England, and in this Commonwealth by that ripe, and accomplished scholar and eminent divine, the late Dr. Bentley of Salem, who was one of the leading champions among the learned clergymen in this part of the country, who have defended the Unitarian faith. I was rocked in the cradle of civil and religious liberty, and was early taught, that universal toleration was the vital principle of the Christian Religion. That principle I will teach to those, for whose moral, political, and religious instruction, I may be responsible, and never will I fail to defend that principle, while I have the power to defend aught, which is of value to me in this world.

Gentlemen. There are two general grounds of defence, and they will be now plainly stated. It will be contended that the case is not within the Statute, on which the indictment is founded, and that the Statute is in violation of the letter and spirit of the Constitution.

The case I contend is not within the Statute. I shall not repeat the first two articles, woven into the indictment, and taken not from editorial articles in the defendant's newspaper, but from communications not previously read by him, and one of which the most obnoxious, was published in his absence from the city, and for which, he is neither legally nor morally responsible. I shall not read these articles, for they are as offensive to my feelings, as to those of my learned friend, whose duty it is to conduct this prosecution, in behalf of the Government. No good can result to the defendant, the Jury, or this crowded auditory, from reading them. I shall therefore speak of them generally, being confident that the grounds of the defence, will not be misunderstood.

Let us now examine the facts of this case, and compare the articles complained of, with the Statute against blasphemy, bearing continually in mind the established principle of law, that the facts of a case must be brought within the very letter of a penal statute, the "bitter letter of the law" to be within its operation. The first article complained of, and which it will be constantly recollected, was extracted from the Free Inquirer of New York, and printed during the defendant's absence from the city, is not a "denying, cursing or contumeliously reproaching God, his creation, government, or final judging of the world;" it is not a "cursing or reproaching Jesus Christ, or the Holy Ghost;" it is not a "cursing or contumeliously reproaching the Holy Word of God" "by exposing" the "canonical scriptures" or "any part of them, to contempt, and ridicule." These are the offences against the Statute, described in the words of the Statute. Now this article first complained of, is not a denial, nor cursing, nor reproaching, of any person or thing. It is a statement, I admit in language highly offensive to sober and refined minds, of the doctrine of the belief in the miraculous conception of the Virgin. This is the head and front of this offence, and though God, Jesus Christ, and the Holy Ghost, are named in this Statute, there is no mention made of the Virgin. The article denies nothing, curses nothing, reproaches nothing. It is not even a denial of the truth of the doctrine of the miraculous conception, except as the opinion of the writer may be inferred from the manner, in which an allusion is made to the belief of such a large portion of the Christian family.

In discussing this subject, it becomes us to remember that we are treading upon a spot, consecrated by the belief of such a large portion of pious christians, and by the sensibilities of

refined minds, who respect the sincere belief of others from whom they may differ in opinion. Let us approach it, with the feelings, which are inspired by reading in the scriptures the words from the burning bush, "put off the shoes from thy feet : for the place whereon thou standest is holy ground." But it is not in my power to exclude from this cause, the consideration of subjects, which are in the minds of all Christians connected with the most solemn associations. Had it been in my power, I would as a friend to religion, have excluded from the consideration of a court of justice, this whole enquiry and prosecution, instituted, I have no doubt, with the best and purest motives. So far from serving the interest of religion, such prosecutions as the present, are productive of the greatest injury to the cause they are intended to promote. They drag forth holy things, and expose to a rude gaze in a trial before Courts, Juries, and mixed audiences, things better suited to the retired contemplations of the closet.

This article is no more than a statement in an improper manner of the belief in the miraculous conception. Has not a man who does not believe in that doctrine a right, I mean a strict legal right, to assail that doctrine, by the power of argument, and the force of satire. The most deadly weapons are used with as much zeal in religious controversies by theological, as by gladiators in political or other disputes, in which the passions of men are enkindled. Has not this very doctrine been before assailed by reasoning, and ridicule? The pious Catholic believes in this doctrine, from the Monarch to his humblest subject—and the interests of Kingdoms, as well as families, are often in prayers of holiness, committed to the care of the Holy Virgin. None are more devout and sincere than our Roman Catholic brethren in this belief, and there are none from whom I differ in opinion, whose feelings I should be more inclined to respect; for among them, and their learned, useful and pious clergy in this vicinity, I am happy and proud to number some of my most valued and respected friends. The members of the Church of England cherish the same belief, which is also extended throughout the ranks of Christians of almost every denomination. But there is another class of Christians who yield to none in the sincerity of their faith, and who consider this belief, wholly erroneous. If I rightly understand that faith, the Unitarians, who hold to the doctrines of Priestley and of Belsham, do not believe in the miraculous conception, and doubt the authenticity of the passages in the common editions of the Gospel, which are supposed by others to establish its truth. The opin-

ion of that class of Christians is, that the Messiah, foretold to the Jews, was to be, as Moses described him, one of the Jews, and like unto his brethren. They hold with St. Peter in Acts, 2—22, that Jesus Christ was “a man approved of God,” and with St. Paul in 1. Tim. 2—5 : that “there is one God and one mediator between God and men, the man Christ Jesus.” They consider that the expression, Son of God, is to be understood figuratively, and not literally, for Christ himself uses similar figurative language and says in his Sermon on the Mount, “Blessed are the peacemakers, for they shall be called the children of God,” and in the Lord’s Prayer he directs his disciples to use the address “Our Father.” This class of Christians further hold, that by the Holy Spirit, the word they use, is to be understood, not a distinct person, as the Trinitarians believe, but God himself, and that the Spirit of God is in God, as the spirit of a man is in him. The following quotations from Priestley’s *History of the Corruptions of Christianity*, will better explain this subject, than any remarks of mine.

The *Unity of God* is a doctrine on which the greatest stress is laid in the whole system of revelation. To guard this most important article was the principal object of the Jewish religion ; and, notwithstanding the proneness of the Jews to idolatry, at length it fully answered its purpose, in reclaiming them, and in impressing the minds of many persons of other nations in favor of the same fundamental truth.

The Jews were taught by their prophets to expect a Messiah, who was to be descended from the tribe of Judah and the family of David, a person in whom themselves and all the nations of the earth should be blessed ; but none of their prophets gave them an idea of any other than a man like themselves, in that illustrious character ; and no other did they ever expect, or do they expect to this day.

Jesus Christ, whose history answers to the description given of the Messiah by the prophets, made no other pretensions ; referring all his extraordinary power to God ; his father, who, he expressly says, spake and acted by him, and who raised him from the dead ; and it is most evident that the apostles, and all those who conversed with our Lord, before and after his resurrection, considered him in no other light than simply as a *man approved of God, by signs and wonders which God did by him.* Acts ii. 22.

Not only do we find no trace of so prodigious a change in the ideas which the apostles entertained concerning Christ, as from that of a *man like themselves* (which it must be acknowledged were the first that they entertained) to that of the *most high God*, or one who was, in any sense, their *maker or preserver*, that when their

minds were most fully enlightened, after the descent of the holy spirit, and to the latest period of their ministry, they continued to speak of him in the same style ; even when it is evident they must have intended to speak of him in a manner suited to his state of greatest exaltation and glory. Peter uses the simple language above quoted, of *a man approved of God* immediately after the descent of the spirit ; and the apostle Paul, giving what may be called the christian creed, says, 1 Tim. ii. 5, *There is one God, and one mediator between God and men, the man Christ Jesus*. He does not say the *God* ; the *God man*, or the *super-angelic being*, but simply *the man Christ Jesus* ; and nothing can be alleged from the New Testament in favor of any higher nature of Christ, except a few passages interpreted without any regard to the context, or the modes of speech and opinions of the times in which the books were written, and in such a manner in other respects, as would authorize our proving any doctrine whatever from them.

* * * * *

That the ancient Jewish church must have held the opinion that Christ was simply a *man*, and not either *God Almighty*, or a *super-angelic being*, may be concluded from its being the clear doctrine of the scripture, and from the apostles having taught no other ; but there is sufficient evidence of the same thing from ecclesiastical history. It is unfortunate, indeed, that there are now extant so few remains of any of the writers who immediately succeeded the apostles, and especially that we have only a few inconsiderable fragments of Hegesippus, a Jewish christian, who wrote the history of the church in continuation of the *Acts of the Apostles*, and who travelled to Rome about the year 160 ; but it is not difficult to collect evidence enough in support of my assertion.

The members of the Jewish church were, in general, in very low circumstances, which may account for their having few persons of learning among them ; on which account they were much despised by the richer and more learned gentile christians, especially after the destruction of Jerusalem, before which event all the christians in Judea (warned by our Saviour's prophecies concerning the desolation of that country) had retired to the north east of the sea of Galilee. They were likewise despised by the gentiles for their bigotted adherence to the law of Moses, to the rite of circumcision, and other ceremonies of their ancient religion. And on all these accounts they probably got the name of *Ebionites*, which signifies *poor* and *mean*, in the same manner as many of the early reformers from popery got the name of *Beghards*, and other appellations of a similar nature. The fate of these ancient Jewish christians was, indeed, peculiarly hard. For, besides the neglect of the gentile christians, they were, as Epiphanius informs us, held in the greatest abhorrence by the Jews from whom they had separated, and who cursed them in a solemn manner three times whenever they met for public worship.

In general, these ancient Jewish christians retained the appellation of Nazarenes, and, it may be inferred from Origen, Epiphanius, and Eusebius, that the Nazarenes and Ebionites were the same people, and held the same tenets, though some of them supposed that Christ was the son of Joseph as well as of Mary, while others of them held that he had no natural father, but had a miraculous birth. Epiphanius, in his account of the Nazarenes (and the Jewish christians never went by any other name) makes no mention of any of them believing the divinity of Christ, in any sense of the word.

It is particularly remarkable that Hegesippus, in giving an account of the heresies of his time, though he mentions the Carpocratians, Valentinians, and others who were generally termed Gnostics (and who held that Christ had a pre-existence, and was man only in appearance) not only makes no mention of this supposed heresy of the Nazarenes or Ebionites, but says that, in his travels to Rome, where he spent some time with Anicetus, and visited the bishops of other sees, he found that they all held the same doctrine, that was taught in the law, by the prophets, and by our Lord. What could this be but the proper unitarian doctrine, held by the Jews, and which he himself had been taught, though he had, no doubt, a particular view to the tenets of the Gnostics which appeared in the earliest age, and which were strongly reprobated by the apostles and their followers?

That Eusebius doth not give this account of the primitive christian faith, is no wonder, considering his prejudice against the unitarians of his own time. He speaks of the Ebionites, as persons whom a malignant dæmon had brought into his power, and though he speaks of them as holding that Jesus was the son of Joseph, as well as of Mary, he speaks with no less virulence of the opinion of those of his time, who believed the miraculous conception, calling their heresy *madness*. Valesius, the translator of Eusebius, was of opinion that the history of Hegesippus was neglected and lost by the ancients, on account of the errors it contained, and these errors could be no other than the unitarian doctrine. It is possible also, that it might be less esteemed on account of the very plain unadorned style, in which all the ancients say it was written.

Almost all the ancient writers who speak of what they call the heretics of the two first centuries, say that they were of *two kinds*, the first those who thought that Christ was a man only in appearance, and the other that he was a mere man. Tertullian calls the former *Docetæ* and the latter *Ebionites*. Austin speaking of the same two sects, says, that the former believed Christ to be God, but denied that he was man, whereas the latter believed him to be man, but denied that he was God. Of this latter opinion Austin owns that he himself was, till he became acquainted with the writings of Plato, which in his time were translated into Latin, and in which he learned the doctrine of the *Logos*.

The following is a note, in Adams' View of Religions, to the article Unitarians.

Dr. Priestley, in his history of the Early Opinions concerning Christ, calls in question the doctrine of Christ's miraculous conception. He disputes the authenticity of the introductory chapters to Matthew and Luke; because Mark and John do not give the least hint of a miraculous conception; and yet, if any part of the history required to be authenticated, it was this. He thinks it is probable, that the gospel of St. Matthew was written in Hebrew; and as the two first chapters were not in the Ebionite copies of the gospel, he takes it for granted they were not written by Matthew, but prefixed to his gospel afterwards. He supposes, that Marcion's copy of Luke's gospel, which begins at the third chapter, was genuine. But admitting, that the introductory chapters of Matthew and Luke were written by them, this learned divine supposes, that the evidence of the gospel history is exactly similar to that of any other credible history, depending upon human testimony; and that the scriptures were written without any particular inspiration, by men, who wrote according to the best of their knowledge, and who, from their circumstances, could not be mistaken with respect to the greater facts, of which they were proper witnesses; but, like other men, subject to prejudice, might be liable to adopt an hasty and ill grounded opinion concerning things, which did not come within the compass of their knowledge. Dr. Priestley says, that though there are but few, who disbelieve the miraculous conception, he supposes, there have always been some, and those men of learning and character among Christians; and that, to his certain knowledge, the number of such is increasing, and several of them think it a matter of great importance, that a doctrine, which they regard as a discredit to the Christian scheme, should be exploded.

Gentlemen,—We perceive that the doctrine of the miraculous conception, was at a very early period of the history of the Christian Church, a subject of dispute. The belief in the doctrine was denounced with virulence by Eusebius one of the early fathers as a "madness." If the writer of this article believed with Eusebius that it was a madness, had he not as good a right as Eusebius to ridicule and denounce it? If it be a heresy, it must be admitted to be of a kind, not likely to be treated with much delicacy by unbelievers. If it be a false doctrine, although the manner adopted in assailing it may be improper, yet surely it cannot be blasphemous to attack a heresy and a "madness."

I have said in as strong terms as I can command, that I condemn the manner of assailing this doctrine, and if I have not

used language forcible enough, give me terms more expressive and I will adopt them. But if the defendant, who does not profess a belief in Christianity, is to be condemned, what shall be said of those, who, professing a belief in Christianity, have employed much coarser language, when attacking the belief of their fellow christians? If all the violations of the laws of decency and propriety of manner in religious controversies, are to be punished, your Courts must be multiplied, and their whole time will be occupied with corrections of the virulence of religious quarrels, to the entire exclusion of all other business. I hold in my hand a volume of Dr. Priestley's History of the Corruptions of Christianity, containing a reference to a work of Paschasius Radbert one of the champions of the doctrine of transubstantiation, on the subject of the miraculous conception. This work though undoubtedly written, by a divine of unsullied reputation, is nevertheless composed with such a particularity of description, that I should at this day, offend the modesty of any audience, by reading the passage referred to. Indelicate as may be considered the article in the defendant's newspaper, yet it will well bear a comparison with a celebrated work of an eminent divine of the English Church, who aspired to be a Bishop, and who after this publication, was appointed a Dean of the Church, in the second city of the British Empire, I mean Swift the Dean of St. Patrick's in the City of Dublin, and I allude to his Tale of a Tub, which is now before me. This work was written to insult the Roman Catholic Religion, and the Calvinistic persuasion, and to build up the Church of England, for Swift was a High Churchman in his religion, and a Tory in his politics, characters which are bound together like the two bodies of the Siamese Twins. By the term High Churchman, I mean no disrespect to the members of the communion of the Church of England, who are strict in their religious observances.—I allude merely to a division which existed about the time of Swift, rather political than religious, between the High and the Low Churchmen, the former being the arbitrary and bigoted, the latter being the more liberal, and tolerant members of that Church.

But to return to Dean Swift and the work of this divine ; the Tale of a Tub. It is filled with such rank grossness, vulgarity and obscenity, that I do not wish, nay I do not dare to read to you, more than a single extract. This extract contains a biting and vulgar sarcasm upon the belief of the pious Catholics, relating to the Virgin and the cross and other subjects.

The following is the extract, and it is one of the most decent which I could select in the book.

However, it is certain, that Lord Peter, even in his lucid intervals, was very lewdly given in his common conversation, extreme wilful and positive; and would at any time rather argue to the death, than allow himself once to be in an error. Besides, he had an abominable faculty of telling huge palpable *lies* upon all occasions; and not only swearing to the truth, but cursing the whole company to hell, if they pretended to make the least scruple of believing him. One time he swore he had a *cow* at home, which gave as much milk at a meal as would fill three thousand churches; and, what was yet more extraordinary, would never turn sour.* Another time he was telling of an old *sign-post* † that belonged to his *father*, with nails and timber enough in it to build sixteen large men of war. Talking one day of Chinese waggons, which were made so light as to sail over mountains: *Z——ds*, said Peter, *where's the wonder of that? By G——, I saw a large house of lime and stone travel over sea and land, granting that it stopped sometimes to bait, above two thousand German leagues.‡* And that which was the good of it, he would swear desperately all the while, that he never told a lye in his life; and every word, by *G——*, *Gentlemen I tell you nothing but the truth; and the d——l broil them eternally that will not believe me.*

* The Virgin Mary. † The Cross. ‡ The Chapel of Loretto.

This is the manner in which this divine of the Church of England, insulted the sincere opinions of the members of a Church, which embraces in its bosom, by far the greatest portion of the christian family, a Church venerable for its antiquity, and honored for the accomplishments and learning of its Clergy. Yet the Tory Judges of England, whose enormous salaries, and whose rank and titles, have always depended, on maintaining the established religion, and whose craft would be in danger, were the union of Church and State destroyed, these Tory Judges, I say overlooked all this indecency of Dean Swift, and instead of being punished, he was rewarded for the prostitution of his talents. These English Judges, whose decisions have been read to you in the opening speech in support of this prosecution, declaring christianity to be a part of the common Law, could bear with all Swift's impurities of style, because he was the champion of an arbitrary government, and the established religion. Swift could with impunity ridicule the Virgin under the figure of a cow, for it was their ox, who was pushing with his horn and goring their ad-

versaries, and every thing with these English Judges is decent, which assails other Churches, and every thing is indecent which assails their established Church, and this is the whole of their law christianity.

You will find this indecent book in the library of Harvard College, in the Boston Athenæum among the volumes of the British classics, in the private libraries of the most accomplished scholars of Europe and America, in the most respectable book stores, and publicly sold at the book auctions. Yet we have never heard of any indictment either in England, or this country, for the publication of the *Tale of a Tub*, and the writer has been honored both in his own time, and ever since, as one of the most brilliant luminaries of British literature. All this has passed under the eyes of the Judges, Juries and prosecuting officers of Great Britain, and the United States, and to this day no one has complained. No prosecution has been instituted, against the printers who publish, the booksellers who sell, the Directors of the libraries who circulate this most indecent production of an eminent divine of the Church of England. If those who minister in holy things, the servants of the altar, defile decency in their religious controversies, and publish the most gross outrages upon the feelings of other christians, vulgarities which would shock the tenants of Bedlam, and disgust the inmates of a State Prison, how can decorum be expected of those, who have no respect for the christian religion, who believe its priests to be grossly deceived or grossly deceiving, and who seek to overturn its altars? Is vulgarity, the privileged monopoly of the high dignitaries of the Church like Swift? If those dignitaries set such examples of a prostitution of sentiment, and style, they have no right to expect from the adversaries of the Church more propriety of manner, than they practice in their controversies with each other. Why begin with this defendant, when there are so many offenders of high rank to be called to the bar before his turn can arrive?

This offensive article is a translation, as appears from the newspaper, which is the subject of the indictment, from the works of Voltaire; whose writings may be found in the same libraries, as those of Swift, and are circulated in the same manner. And here gentlemen allow me a short digression. What made Voltaire an infidel? He was a deist, not an atheist, as he has been often represented, for in his works are to be found some of the most beautiful, and convincing essays, shewing the truth of the universal belief, of all the wise nations

of antiquity, and indeed of all nations, in the existence of an all wise, good and powerful creator of the universe. Madame De Stael in her work upon the French Revolution, abounding with enlightened and profound reflections, has told us, how Voltaire became an infidel. He was reared about the time of the celebrated repeal of the Edict of Nantz, the famous Edict made by the Fourth Henry granting toleration to his protestant subjects. That Edict was repealed by his grandson Louis the Fourteenth, and in the age of Voltaire the Calvinists of France were dying on the wheel, the gibbet, the rack and the stake, and fleeing from persecution by thousands and tens of thousands into exile. His youthful bosom burned with indignation against persecution, next against the bigots whose blind zeal kindled the flame, and finally against the religion, in whose prostituted name those horrible persecutions were perpetrated. From his youth to his old age, he maintained with all the energy of his mighty mind, a warfare with the priests and the altar, and the influence of his writings is now immeasurable. This is the account which the illustrious daughter of Neckar gives of Voltaire's infidelity, and it is a warning in all ages and countries, to the true friends of christianity, never to wield the flaming sword of persecution, in the name of a religion, whose founder has declared, that they who use the sword, shall perish by the sword.

I am ready to commence an era of reform in the management of religious, political, and all other controversies. But let the reform commence in the right place. Have not the best men in our country, been slandered in this State, in pulpits, and newspapers, and their principles, the vital principles of liberty, reviled? Is not the same vile work in the newspapers now going on? Yet we hear, and for myself I desire to hear, of no indictments. But if indictments are to be resorted to, in order to suppress vulgarity, and violence in essays relative to religion, why should not Justice aim at a higher mark, than the defendant? Let the blow fall upon those of higher rank, and more extensive influence, and the example will be more powerful, and the effects more extensive and enduring. Call before you the President and Government of your College and demand of them, why they suffer Swift's Tale of the Tub and Voltaire's works to remain in the College library and circulated among their students. Bring before you the Directors of your Athenæum, and call them to account, for circulating these works among the proprietors of that splendid institution. Summon to your bar the respectable booksellers of the

city, for selling these works. When you have done all this to purify the public taste, call upon Abner Kneeland, and he will obey your summons. But do not begin at this late day, the work of reform, with the weak. It has too much the air of oppression. It has too much the appearance of feeling power, and forgetting right, and it will have the effect, which prosecutions of the strong against the weak have always had, it will make the strong weak, and the weak strong.

This very article republished from the Free Enquirer in the Investigator, was originally published in New York, a city containing a population of near three hundred thousand persons. In that city, there are as I understand, but two Unitarian Societies, and one of these is now without a pastor. The rest of the Christians of that mighty city are Trinitarians. Yet the original publisher of this article was not indicted. It was reserved for the Grand Jury of this Unitarian city, this citadel of liberal principles in religion, to commence this prosecution, against the Editor of a paper where it was merely republished. In the Orthodox city of New York, they treated the ribaldry with contempt, and did not consider it necessary to sustain the cause of religion by the faggot, the gallows, the pillory, or the whipping post. I had hoped in this city, boasting of its liberal opinions in religious matters, never to have known a prosecution on a penal law relating to religion, for I believe all such laws to be unwise and unjust, and prohibited by our glorious Constitution.

This is the boasted land of toleration. No, gentlemen, that is not the proper word, for who shall presume to tolerate another, when the latter has an undeniable right to enjoy and maintain his own opinions? I should have said this is the boasted land of civil and religious freedom, guaranteed by written Constitutions of Government, so plain that he who runs may read the privileges which they secure, and the rights they proclaim. Yet here in this City of Boston, when we have about finished one third of the nineteenth century, we are engaged in the trial of an indictment founded on a penal Statute respecting religion; a Statute, by which the defendant may be punished, by sitting on the gallows, the pillory, or imprisonment, for publishing a miserable ridicule of the doctrines of the miraculous conception; a coarse attack upon the modes of prayers often addressed to the Deity; a calm profession of disbelief in the belief of the Universalists, in the divinity of Jesus Christ, and in the doctrine of the resurrection. Call it what you may here, the world and posterity, will call all such prosecutions, persecu-

tions, and instead of crushing by these means, the cause which is attacked, its strength will inevitably be increased, unless the nature of mankind shall be changed, for there never was any good yet done by the faggot, the wheel, the rack, the gallows, the pillory, the whipping post and the dungeon in religious feuds, except in the cause against which, these engines of power have been employed.

Whether the Unitarians are the authors of this prosecution or not, if it shall be productive of credit they will in consequence of the Unitarian character of this city have all the credit, and if it shall be a source of discredit, they must bear it. Already this prosecution has been publicly announced in the Orthodox city of New York in the following manner.

"THE HOLY INQUISITION RE-ESTABLISHED IN BOSTON."

I regret this prosecution, as I believe it will be injurious to the Unitarian cause, of which this city and its vicinity is the head quarters, and I fear that prosecutions on penal Statutes in relation to religion in this city, will cast an imputation upon, and create a disservice to the cause of liberal principles.

Gentlemen. I have now said nearly all which I consider necessary and proper in relation to the matter and the manner of the first article referred to in the indictment. Yet there is something more to be said in relation to this article, and perhaps it is of more importance than any thing, which has been addressed to you on this part of the case. Whatever may be the demerits of that article either of matter or manner, whatever may be the sins of it, which may lay at the door of its author, the defendant is as innocent as you are, and for that article he is neither morally, nor legally responsible.

You have it in evidence from the foreman in the office of the Investigator, the only witness examined on the part of the prosecution, and it seems the Government have no scruple, in calling a witness upon the stand, to convict a party accused, even from the mint of irreligion, the infidel printing Office—you have it I say from the witness, that it is the custom of Mr. Kneeland, to put in the copy drawer, as it is called, the articles which he intends shall be published, that it is the well understood regulation of the office, that nothing is to be printed in the paper, except it be taken by the compositor from this drawer,—that Mr. Kneeland went out of town, that during his absence the Free Inquirer arrived from New York, and that a clerk took it from the post office, and printed this article before the

defendant's return to the city. This is the testimony of the Government's witness, and yet you are asked to convict Mr Kneeland for an act, which he never committed, any more than any gentleman on this Jury. This is in violation of the plainest principles of justice and law, for no person can commit a crime, without a wrongful act, and a guilty intention. There was neither intention nor act on the part of the defendant.

You have been told of a *nisi prius* decision of Lord Kenyon, a Tory Judge, straining justice and law to establish the position, that a printer of a newspaper is criminally responsible, for a publication in his newspaper—without his knowledge. I admit that he is civilly responsible, because he is bound to repair any damage done to others, by his agents, acting in the course of their employment or agency.

But this is not the doctrine of the criminal Law. A person is answerable morally and legally only for his own offences—not those of others, in which he has no participation. The English decisions on the law of libel, in favor of the Crown, are entitled to but little respect in this land of liberty. In England they have a monarchical Government and an established religion, and their Officers of State and Church, are necessarily all interested and united, to maintain the abuses, corruptions and oppressions by which their wealth and power are obtained and secured. Consequently you can expect little purity even in the courts, in their decisions upon the law of libel, in political, or religious causes, for the press is the great engine, which all corrupt combinations against the equal rights of mankind dread, and by the influence of which it is well known, these unjust combinations will finally be destroyed. It is in vain to expect even common honesty in the decisions of the English Judges relating to the law of libel, for the whole history of England proves, that when the Government has desired to oppress the people, and trammel the freedom of speech and the press, they have generally found the Judges, willing instruments of their oppressions. There are some splendid exceptions to the correctness of this remark, but unfortunately they are few, and therefore more noted, observed and praised. Shew me an American decision, in which such a tyrannical doctrine has been recognised. None such has been produced, and I hope for the honour of our country, none such can be found. I hope no such decision will ever disgrace our judicial history.

Gentlemen. A different doctrine from this has been laid down, even in the English Courts, not in a hasty *Nisi Prius* trial, but after solemn argument and deliberation, by the full

Court of the King's Bench. In the celebrated case of *Almon*, the bookseller prosecuted for selling the famous letters of *Junius*, and where the Court took care to have the defendant convicted, it was decided that when a book was sold in a book-sellers shop, by his agents, it was *prima facie* evidence of a publication by the principal. But the Court admitted that it was only *prima facie* evidence against him, liable to be rebutted by testimony to show that it was without his knowledge or assent. The following are the remarks of the Judges as reported in 5 *Burrowes* 26, 86.

Lord Mansfield said and repeated, that Mr. *Mackworth* had understood him perfectly right; and he was very glad to find that there was no doubt of what he had said. The substance of it was, that in point of *law*, the buying the pamphlet in the public open shop of a known professed bookseller and publisher of pamphlets, of a person acting in the shop, *prima facie*, is evidence of a publication by the master himself: but that it is liable to be contradicted, where the fact will bear it, by contrary evidence tending to exculpate the master, and to shew that he was not privy nor assenting to it nor encouraging it. That this being *prima facie* evidence of a publication by the master himself, it stands good *till* answered by him; and if not answered at all, it thereby *becomes conclusive* so far as to be sufficient to convict him. That proof of a public exposing to sale and selling, at his shop by his servant, was *prima facie* sufficient; and must stand *till* contradicted or explained or exculpated by some other evidence; and if not contradicted, explained or exculpated, would be in point of evidence sufficient or tantamount to conclusive.

Mr. Justice Aston laid down the same maxim, as being fully and clearly established, "That this *prima facie* evidence (if believed) is binding *till* contrary evidence be produced." Being bought in a bookseller's shop, of a person acting in it as his servant, is such *prima facie* evidence of its being published by the bookseller himself: he has the profits of the shop, and is answerable for the consequences. And here is a corroborating circumstance; namely, that it professes to be printed *for* him. It is as strong a case as could be put. The sale in his shop is sufficiently proved: and he is answerable for what is done in his shop. And here is no sort of proof produced in contradiction or exculpation. This *prima facie* evidence, not answered, is sufficient to ground a verdict upon: and there appears no reason for granting a new trial.

Mr. Justice Willes was also of opinion that there was no foundation for the motion for a new trial; and that, upon all the circumstances of this case, Mr. *Almon* was answerable as publisher of the libel. He is a common known bookseller and publisher; and it imports, upon the face of it, to be printed for him; and it was

bought in his shop. This is sufficient *prima facie* evidence of his privity : and no contrary evidence was produced by him. It was liable to be refuted or explained : but as it never was, nor any excuse shown, it stands good to convict him.

Mr. Kneeland authorizes me to declare that he never would have voluntarily suffered this article to be republished in his paper. It filled him with disgust, and he intends at a proper time, when this trial shall be concluded, to publish his regret, that it found its way into his newspaper.

Gentlemen. I have now finished my comments on this article, first complained of in the indictment. Let us pass to the consideration of the second subject of enquiry in this prosecution.

The second article I readily admit is also highly offensive to good feelings and taste. I wish here to be considered, as repeating, what I have before said, in reference to the other article. Accustomed as we are from childhood to consider such subjects, it is perhaps even more revolting to the feelings, than the first article complained of. But it is not Mr. Kneeland's composition, it is no emanation of his mind. It is contained in a communication, as I understand, either not read or hastily examined before publication : and though this is no legal excuse, in a moral point of view, it certainly is some palliation.

I cannot bring my mind to believe, that the writer intended, or would dare to cast ridicule upon such a sacred subject as the Supreme Being. The intent should be carefully considered. Is it not more reasonable and charitable to suppose, that the intent of the writer was, to ridicule merely strange ideas of their worship, which the persons he describes as offering up absurd and contradictory prayers, must have in their minds? The object of the article, both the manner and the matter of which I condemn, is to expose to ridicule, the strange modes of prayer, which many very piously adopt. It is however very well known, that the subject of the efficacy of prayer, is one, which has agitated the minds, and excited the speculations of the most devout christians. Have not volumes of theological lore been written, and a vast number of profound sermons preached upon this deep and important subject? Is it not to this day often made the theme of very able and eloquent discourses, by our enlightened clergy, of almost

every denomination? The subject is one which presents in the outset, a very serious consideration to every reflecting mind. It seems exceedingly difficult to understand, how the determinations of an all wise Being, can be affected by the resolutions and wishes of frail mortals. It is true Jesus Christ ordained prayer, and directed that perfect form of prayer, the Lord's prayer, to be observed. But he also says. "Your Heavenly Father knoweth what things ye have need of, before ye ask him." The style of expression in prayer, which many well meaning, but uninformed persons adopt, often renders, in the estimation of the better informed, the exercise any thing rather than a serious exercise of devotion. So sensible, of the bad effect on others of absurd peculiarities in prayer, have been the divines of the Roman Catholic Church and the Church of England, that they have established their elegant services, in order to preserve the decency of divine worship. As a republican, I detest the Hierarchy of England, with its dignitaries the Lords Spiritual, proudly clad in their lawn, and rolling in riches, wrung by the tithe system from the hand of honest industry, and yet claiming to be the representatives of the humble fishermen of Galilee. That lofty Hierarchy was the cruel persecutor of our pilgrim ancestors, and drove them across the ocean, to seek for liberty of conscience, in this distant land, and the spot on which their weary feet first rested, in the new world, was then covered with the snows of a northern winter. That Hierarchy in the days of the American Revolution, was the haughty and merciless oppressor of our valiant fathers, and sustained throughout the whole of that memorable struggle, the arbitrary pretensions of the British Government, to enslave our country, and all their unjustifiable, violent and cruel measures to destroy our people, even to the employment of the heathen savage, in murderous warfare, against their fellow christians the descendants of the Puritans, the former victims of Clerical oppressions. Those proud and bigoted Lords Spiritual, are now, as in former times, the same unyielding adversaries of the rights of man, and obstinate opponents of all reformatations, calculated to alleviate the burdens, and elevate the condition of the people, to whom they assume to be the guides to Heaven, while in this world, they are constantly pillaging them of their property, and trampling upon their liberties.

But with all my political abhorrence of this Hierarchy, and differing in faith from the doctrines of their Church, I admire many of the beautiful, and solemn compositions in their

Book of Common Prayer. I often read those compositions, always with delight, and never I hope without improvement, and of all splendid human performances, to my mind the most magnificent is the solemn service of the Church of England, for the burial of the dead, a service, which lifts the soul of the hearer from earth to Heaven. Ask my learned friend, the Counsel for the Commonwealth, who was reared in the bosom of this Church, why these fine forms of prayer have been devised, and he will tell you, to guard against absurdities, too frequent in the matter and the manner of prayer by uninformed persons, and to preserve the decency of divine worship. Would not this be an admission, that there were in use, modes of prayer of a highly objectionable character, and deserving remark and needing reformation, although as I cheerfully admit, not a fit subject for levity and coarse ridicule.

I have supposed that it was now an opinion, if not generally entertained, certainly believed by many devout, and enlightened christians, of various denominations, that the chief efficacy and advantage to be expected from prayer, is the effect, which the exercise is calculated to produce on the heart of the suppliant pouring forth the aspirations of the soul to Heaven, the same effect, which is attained by silent and solemn meditation, among that useful, benevolent and pious class of christians the Quakers, whom our equally pious ancestors, persecuted with such blind and furious zeal, even to the whipping post, the pillory and the gallows, the shame and terrors of which punishments, are now denounced upon the head of the defendant silvered o'er by Time.

Gentlemen. Let us examine this subject a little further, and it will be found that the defendant's newspaper, has not been the first organ to disparage prayer. The religious Puritans disparaged, with as much scorn and contumely, the modes of prayer adopted by those, from whom they differed in sentiment, as the writer of this article in the Investigator, disparages the modes of prayer adopted by those, from whom he differs in sentiment. In Southey's History of the Church, Vol 2. page 359, we find that the Puritans disparaged social prayer. The following is an extract from that work.

Because of the superstition connected with the mass, the Puritans, falling into an opposite extreme, disparaged social prayer and thanksgiving, and attached as much importance to sermons as the Romanists to what they deemed the sacrifice of the altar. They maintained the extravagant and pernicious opinion, that the scrip-

ture had no efficacy unless it were expounded in sermons, the word no vital operation, unless it were preached from the pulpit; that prayers and sacraments, without sermons, were not merely unprofitable, but tended to further condemnation.

Gentlemen. Our Puritan ancestors in this Commonwealth were not more mild in their denunciations of the prayers of the Church of England, than were their brethren, the other side of the water, who under Oliver Cromwell shook to their foundations, the political and ecclesiastical establishments of England. Let me read to you an extract from the last will and testament, of one of the early and shining lights of the New England Churches, the celebrated Chauncey, the second President of Harvard College. It contains an attack, upon the prayers of those from whom he dissented, of the most violent character. The following is an extract, from the biographical article on President Chauncey contained in Peirce's History of Harvard University.

He did not even omit it in his last will, the preamble to which contained strong expressions of self-condemnation for his "so many sinful compliances with and conformity unto vile human inventions, and will-worship and hell-bred superstition, and patcheries stitched into the service of the Lord, which the English *mass-book*, that is, the Book of Common Prayer, and the ordination of priests, &c., are fully fraught withal."

This ebullition of bitter feeling is not poured forth in a fugitive newspaper article; but deliberately recorded in that solemn act, in which a man usually bequeathes his soul to Heaven, while he leaves his earthly prejudices to be buried with him in the grave. Yet here we find one of the most eminent divines and scholars, who have illuminated and adorned our country, a famous President of the most famous University in the new world, denouncing the forms of prayer adopted by the second Church in Christendom in power and renown as a "hell bred superstition." Compare the extract from President Chauncey's testament in relation to prayer, with the article complained of on the subject of prayer in the defendant's newspaper. If the passage in the newspaper be gross and offensive levity, the passage in President Chauncey's last will, is full of uncharitableness, and all the cruelty of ungoverned wrath; carrying the hatred of religious contention even beyond the grave. If President Chauncey had a right to assail the modes of prayer, in use among one class of chris-

trans, is not the right of the defendant, and his correspondent equally indisputable, to assail the modes of prayer, which they dislike, and are disposed to condemn. Surely levity is not more objectionable and illegal than deliberate hate, recorded in a solemn memorial destined to command the attention of posterity, to the latest generations of the Alumni of Harvard University.

But it will be said the article contains a ridicule of the Supreme Being. I have already attempted to shew, that this could not upon a fair construction of the article, have been the intention of the author. But were it even so, while as christians and men, we cannot but be shocked and condemn it, as Jurors you cannot convict either the author or the publisher, by the laws and Constitution of this Commonwealth. Persons capable of such acts, are more the objects of compassion, than punishment. We should offer them the sympathy of our prayers, but no gallows, no pillory, no whipping post. These are not the engines to convert men from even the most fatal delusions and errors of opinion. If vengeance be in store, to God alone, who knows the heart, belongs the dread prerogative; "vengeance is mine, and I will repay, saith the Lord."

Gentlemen, we now advance to the consideration of the third article, extracted from the defendant's newspaper, and made a subject of accusation in the present indictment. This is an editorial article, written by Mr. Kneeland, and for every sentence, word, and syllable, he is morally accountable. These are the only compositions of the defendant, which I have ever seen, for before this trial I never happened to see his newspaper. It was put into my hands, in the course of preparation for this defence. Let us examine this article carefully, and see if it comes within the letter of this statute. The first paragraph is the one in which it is contended, that the defendant has denied God. There is no pretence that in any part of this editorial article, written and published by the defendant, there is any thing like a contumelious reproaching of God, Jesus Christ, the Holy Ghost, or the Holy Scriptures. The offence, if there be any, consists in denying God. Now what are the words? They are as follows:

"Universalists believe in a god which I do not; but believe that their god, with his moral attributes, (aside from nature itself) is nothing but a chimera of their own imagination."

The utmost which can be made of this paragraph, which is copied literatim et punctuatim, from the original article in the Boston Investigator, is an expression of the defendant's disbelief

in the opinions or creed of the Universalists. Were it even an expression of the defendant's disbelief in the existence of a Supreme Being, it would not be a denial of God, within the meaning of this penal law, which it has been shown, is to receive a strict construction. There is a material difference between a disbelief and a denial. The one is a declaration of the state of our own minds, the other is an attempt to influence the minds of others. The one is a declaration, that the party is not satisfied of the existence of a person or thing, the other is a declaration, that the party is satisfied that there is no such person or thing. The one may be the expression of doubt, the other is an assertion that there is no doubt on the subject, and the allegation is a positive denial. It was the meaning of the legislature to prohibit a positive allegation, a direct denial of the existence of God, and not to punish doubts and disbelief, which may be occasioned in the minds of men by the clouds of error, which sometimes darken human contemplations, and intercept the rays of the light of truth. If the sentence complained of, be the expression of a mere disbelief, and all the strain which can be put upon this sentence, will not carry it beyond that extent, the case is not within the provisions of the Statute against denying God.

But, Gentlemen, the defendant never intended to express any disbelief in God. He authorizes me so to declare, and he was filled with astonishment, when he found that such a construction had been given to his language. He is no atheist and he hurls back upon his accusers and persecutors the reproach which is attempted to be cast upon him. Gentlemen, is not atheism like witchcraft an impossible offence? Can a man in his senses behold the wisdom of nature's laws, without cherishing a belief in nature's God? These laws are obviously the decrees of omnipotence, omniscience, and universal benevolence, and the harmony and vastness of the system of the creation, evince the existence of one Supreme Law Giver and Architect of the Universe. It was a remark, made I believe by the late Governor of this Commonwealth, in the Massachusetts Convention of 1820, that God had made man a religious being. This seems to me, to be philosophically correct, and to be proved by the universality of the belief of a God among the civilized and the uncivilized of the great human family. We find this belief spread from the North to the South; in the East and the West, in the palaces of Princes; in the cottages of the poor, in the seats of learning, in the abodes of ignorance; in the tents of the dwellers on the great deserts, in the hovels of the Hottentots under the blazing sun of Africa: and as we learn

from the celebrated navigator Parry, even in the snow huts of the Esquimaux in the dark and frozen regions near the North Pole. A man may be bewildered in the mazes of a metaphysical labyrinth, the creation of his own mind. But the Deity has made him a religious being; and has impressed the truth, there is a God, on the living tablet in his breast, and he can no more eradicate that belief, than he can tear his heart out, and trample it under his foot. I contend that there is, that there can be no such crime as atheism, although the bloody records of superstitious cruelty exhibit instances of convictions for this offence, as they do of convictions for witchcraft, an offence which never was committed since light first broke on this creation, and never can be committed so long as that light shall remain to cheer the world.

I have said the defendant never intended to express even a disbelief of the existence of God, and that he maintains no such disbelief. He intended by that article merely to say, that he dissented from the belief of the Universalists, with whom he was then engaged in a controversy: in saying that he did not believe in "their God" he meant, that he did not believe in their creed. There are some legal rules of construction, which may aid your inquiries in this part of the case. It is a sound and well established rule of construction of a man's language, as it is of consideration of his acts, in a criminal case, to adopt in all cases of doubt, the construction or consideration most favorable to the prisoner. You are to adopt the most mild and merciful, and tolerant construction. So far has this principle been carried, that formerly it extended even to civil cases. Anciently it was the rule in all civil actions for words, to construe them in favor of the defendant in the milder sense, when they admitted of different interpretations. This rule is altered in civil cases, but in criminal cases, it is not relaxed in the least degree. Apply these humane principles of the law to the case under consideration, and the defendant will at once be acquitted of this part of the charge.

Without needing to seek shelter under this principle of the law, respecting the construction to be applied to expressions of a doubtful character, the defendant contends that there is no doubt in this case, and that his meaning was clearly and grammatically expressed. He contends that by every rational and grammatical construction, it is apparent, that he did not intend to express a disbelief in God, but merely in the belief of the Universalists. He meant to use, and he contends that he did use the word God as it is often used, by persons of one opinion in speaking of them of a different opinion, as synonymous with

belief. This is a common mode of expression, not only in popular discourse, but in the most regular compositions. A Universalist says, "I do not believe in the God of the Calvinists." What does he mean? Surely, he does not intend and cannot be understood to deny God. He is not an atheist. He merely intends to declare, that he does not believe in the creed of the Calvinists. So a Unitarian says, I do not believe in the God of the Trinitarians. He is not an atheist, he merely means to affirm that he does not believe in the Trinitarian faith. The defendant by a similar mode of expression intended to declare, and did declare, that he did not believe in the creed of the Universalists, and no more.

Let us take a glance at the punctuation of this sentence. The words are "Universalists believe in a god which I do not; but believe that *their god*," &c. There is no point after the word "God" in the first clause. The point is after the word "not," and it is a semicolon. But in the next paragraph the punctuation is different. There the words are "Universalists believe in Christ, which I do not," with a comma after the word Christ. In the latter sentence, the defendant intended generally and absolutely to express his total disbelief in the divinity of Jesus Christ. In the first paragraph he did not intend to express generally and absolutely his disbelief in God, but in "*a God*" that is, the "God" or belief of the Universalists. He solemnly declares, before this tribunal, that this was his object, and that the difference in the punctuation in these two sentences, was made deliberately, (though surely not anticipating in this land of liberty, and toleration, any such prosecution as the present) with the distinct objects of marking the difference, in the extent of his professions of his disbelief in relation to the Deity and Jesus Christ.

Let us now test this sentence, by the rules of grammar. The defendant does not say, the Universalists believe in God, which I do not. Had he used such an expression, there would have been no loup to hang a doubt on respecting his meaning. It would have been plain as day. It would have been a profession of a disbelief generally and unequivocally, in the Supreme Being. But the expression is "Universalists believe in *a God* which I do not." This article *a* limits the meaning as he intended it should. He intended to say merely that he did not believe in "*a God*," that is the 'God' or creed of the Universalists. What do the grammarians teach us, respecting the office of this article? The rule in Murray is that the article *a* "is used in a vague sense to point out *one single thing* of the

kind in other respects determinate or indeterminate." The Trinitarian says Unitarians believe in *a* God which I do not. Is the Trinitarian an atheist? Does he deny God by this expression? Surely not. So far from professing a total disbelief, he intends to express a more extensive belief, than the Unitarians, to declare, that he believes in more than they do, that he believes in the Father the Son, and the Holy Ghost, whereas Unitarians believe only in the Divinity of God. Apply this rule to the sentence under consideration and it is apparent, by the grammatical rule of construction, that the writer intended to designate and distinguish one particular God or belief of the kind of Gods, or creeds, worshipped or cherished in the world. Again, the article *a* is sometimes used, in a definite sense, and even some times called the definite article *a*, as will be perceived in the note to Alger's Murray in the Cincinnati Edition, 1832. There is an imperfection in the English language having but two articles, which does not exist in the French. In French there are three articles, the indefinite, the definite, and the partitive. The latter is used to limit and restrain the sense, which in English, is often imperfectly done, by the indefinite and definite articles; here the article was used in a definite and limited sense, and would not have been used, in framing that sentence, had not the defendant thereby intended to limit his disbelief, to the disbelief of the particular God or creed of the Universalists. When he speaks of his disbelief in Christ, he does not say *a* Christ, but simply, absolutely, unequivocally, without limit or qualification, declares that he does not believe "in Christ." He would have adopted a similar construction of the sentence, and not have used the article *a* in the paragraph respecting God, had he meant to declare simply, absolutely, unequivocally, without limit or qualification a disbelief in God. There can be no rational ground for a doubt of the real meaning of the defendant, when the next clause of the sentence is considered. The words are "Universalists believe in a God which I do not; but believe that *their* God." This clearly shows, that the words "*a* God," and the words "*their* God" are used in the same limited sense, and that the object was to define and distinguish the God or creed of the Universalists, as a particular faith, from which the writer dissented. Had his intention been otherwise the article *a* would have been omitted in the first clause of the sentence, and the word *their* in the second, and the sentence would have been thus framed "Universalists, believe in God, which I do not, but believe that *their* god," &c.

Gentlemen, the author of this prosecution has fallen into a grammatical blunder, in his understanding of this sentence, and the Grand Jury have adopted the same mis-construction, in supposing, that the defendant, had expressed a disbelief in God, whereas he has only expressed his disbelief in a God," a particular God or creed, using the word God in the sense of creed or belief, as it is often used. If the wise author of this prosecution, and the enlightened Grand Jury, who have brought the prisoner to the bar to answer before you, have fallen into an error of grammar, a thing so easily avoided, may not some indulgence, some christian charity, be extended by you to the unfortunate errors and delusions, into which the defendant has fallen in his contemplations, upon the abstruse and vast subject of religion, in relation to which there are so many various opinions and doctrines, and consequently such a multitude of errors. You Gentlemen I hope, will not by your verdict expose this aged man to be set upon the gallows between the heavens and the earth, an object for the gaze and the scorn of mankind, even for the most unfortunate errors of opinion, where the wisest sees but through a glass darkly.

His Honor Judge Thacher here said to the Counsel. You say the defendant disclaims the intention of denying the existence of God, and that he only declares his disbelief in the God the Universalists believe in ; but is not the same God the Universalists believe in, the God of all? I am afraid his denial goes farther.

Mr. Dunlap. I do not anticipate any other construction from the Court, but I am now arguing to the Jury, on a matter of fact, and your Honor knows, that if there be any reasonable doubt, the rules of law require that he shall have the benefit of it, and that construction is to be given, which is most favorable to the prisoner. Gentlemen, this question respecting the meaning of this sentence, is purely a matter of fact, and exclusively for your consideration. The Judge's right and duty is to pronounce his opinion on the law to the Jury, who in criminal cases have also the right to decide the law and must finally settle, when a general verdict is returned both the law and the fact. But with the decision of the facts, the Court have no concern, it is exclusively the province of the Jury. The Judge, I say it respectfully, but firmly and decidedly, has no right to influence your opinion, by his, in matters of fact. You are to judge by the dictates of your own understandings and consciences, guided by the light of mercy.

The defendant in adopting the expression "a god" and

"their god" to designate a particular belief, is sustained not only by popular usage, but by some of the highest authorities in Church and State. I shall satisfy you of the correctness of this statement, by an article from the powerful letter of Professor Stuart, of Andover, on Religious Liberty, published in 1830, I shall have frequent occasion to make use of this glorious production, which has all the liberality of the speeches of Mr. Fox, and all the fire and energy of the eloquence of Lord Chatham, the modern Demosthenes. I admire the letter, and its expanded and sound constitutional views of the enlightened author, of whom, though believing in a different faith I shall speak here and every where, in terms of most exalted respect. This letter is an honor not only to its author, but to the country and the age. Professor Stuart says on the twenty-seventh page of his letter.

We limit the meaning to agreement in things, which in our view are *essential*. Such we do honestly believe to be the difference between Unitarians and ourselves. And such, not a few of the Unitarians themselves have avowed it to be. Mr. Belsham declares that "we do not worship the same God;" and some of your writers and speakers declare, that the God whom we worship is a *devil*. How can you complain, then, that we separate from you? Surely you do not wish to be united in the bonds of communion with such worshippers. If you have any conscience on this subject, it must remonstrate against it.

Again Professor Stuart says on the twenty-third page of this letter.

I know of nothing in any recent Orthodox publications, which can well compare with the reiterated charges against us by Unitarians, from the pulpit and the press, of bigotry, of gloomy superstition, of dark and fraudulent designs on the religious liberties of our country, of worshipping a God who is a tyrant, of propagating horrible and blasphemous ideas of the Divinity, of worshipping a God who is no better than the devil.

Does Professor Stuart make an unfounded charge? He quotes the Rev. Mr. Belsham, the great champion of the Unitarian faith in England. He refers to the current publications of the day in support of this statement. He might have referred to Dean Swift and to Jefferson to show, that the Divines of the Church of England, and that great defender of Unitarianism, speak of the God of the Orthodox, as a different

God from him, whom they worship. Dean Swift says in his Tale of a Tub "Jack" by whom he means the great reformer John Calvin "introduced a new Deity who has since met with a vast number of worshippers." President Jefferson in a letter to President John Adams, dated April 11, 1823, thus expresses himself.

I can never join Calvin in addressing *his* God. He was indeed an atheist, which I can never be; or rather his religion was dæmonism. If ever man worshipped a false God, he did. The being described in his five points, is not the God whom you and I acknowledge and adore, the Creator and benevolent Governor of the world; but a dæmon of malignant spirit.

Here then we find Mr. Belsham, President Jefferson speaking for himself, and the venerable President John Adams, to say nothing of the pamphleteers and sermonisers of the day, referred to by Professor Stuart, proving the correctness of the assertion in the Professor's letter, that the Unitarians declare that they do not worship the same God as the Orthodox, and that some affirm that the God whom the Orthodox worship is "a Devil." There is no escape. Here is the proof on the spot, before you, read and addressed to your hearing and understanding, to prove that in religious controversies, the word God, is often used as synonymous with creed and belief by minds of the first order of talents, of the most improved cultivation, and of the greatest authority among men. The position then is established that it is a common mode of discourse and writing, to deny a belief in a God, the object of the worship of opponents, intending merely to deny a belief in their creed or religious faith. This was all which the defendant did, when he said "The Universalists believe in a god which I do not," and he is sustained in the mode of expression, by the authority of some of the greatest names in history. He has but followed, where the greatest men have led the way, and an unfavorable construction cannot be given to his expressions, without violating the dictates of reason, the rules of grammar, and the rules of law, which require, that the turn of the scale should always be given to the prisoner.

Permit me before leaving this part of the case, to enquire, is this kind of language to which I have alluded, and which has been quoted, the privileged monopoly of the eminent churchman and the great philosopher? If it be not so, then the prisoner has as clear a right to use it, as Swift, Belsham, Jefferson, and the other writers referred to by Professor Stuart. Are

the publishers of the correspondence of the apostle of liberty indicted? Yet Jefferson says to his illustrious friend Adams, the God in whom the Calvinists believe, "is not the God whom you and I acknowledge and adore." What more has the defendant done, than use a similarity of expression, respecting the creed of the Universalists? He says "Universalists believe in a god which I do not; but believe that their god," &c. "is a chimera." Jefferson says, not that the God in whom the Calvinists believe is a "chimera," but "a demon of malignant spirit." Does he not deny the God of the Calvinists, as much as the defendant the God of the Universalists? Yet Jefferson so far from professing atheism in that denial considered himself denouncing it. If a prosecution should be instituted against the publishers of Jefferson's letters, for blasphemy, in any part of our country, even here where that great and good man has been so vilely misrepresented and calumniated, from the pulpit and by the press, it would be crushed by the power of public opinion, which sooner or later will crush all such proceedings, as the present ill-starred prosecution. Gentlemen. Is this style of waging religious controversy to be allowed, to one class of writers, those of high rank, and interdicted to another class, those of inferior reputation. This is not the correct doctrine in the Republic of Letters, or in the political Republic. Is honor to be given to one man for a mode of attack upon his opponents, for which the defendant is to be consigned to the dungeon, the pillory and the gallows?

Gentlemen, I have said the prisoner does not admit himself, to be an atheist, and he repels the charge.

His Honor Judge Thacher here interrupted the counsel, and said.

"But what is his God? If the defendant disclaims atheism, he must believe in some God, and I should like to know, what the God is that he believes in.

Mr. Dunlap. That is an affair between him and God, not between him and your Honor. He does not consider that he is bound to make a confession of faith here, before this earthly tribunal, or that the court has a right to require of him, a disclosure of his religious opinions. He is before a common Law Court, and not before the Inquisition, and will not submit to interrogatories respecting his creed. He is brought here on a charge. It is sufficient for him to defend himself against that charge, without being compelled to state what is his religious belief, for which he is accountable only to God.

Judge Thacher. But the defendant is now before a human tribunal, and we must know what he does believe in this particular, in order to judge, whether he does or does not believe in any God.

Mr. Dunlap. I am arguing this cause to the Jury on a matter of fact, and here again respectfully, but solemnly protest against the Jury's being influenced in any matter of fact, by the opinion of the Court. Were it otherwise the Jury trial would be a mockery, and not the bulwark of the liberty of the people.

Gentlemen. The remaining part of the article complained of, and now under examination, contains a statement of the defendant's disbelief in the miracles, and the christian doctrine of the resurrection of the dead. This is written, as indeed is the whole of the editorial article, (the only matter composed by the defendant, which is the subject of the prosecution) with calmness. There is no ground of complaint, against the manner, the objections urged must be to the matter, and doctrines of this article. There is no violence, no levity, no coarseness. All is moderation and apparent sincerity. Now an attack upon a profession of belief in the doctrines of christianity, as I contend, is not blasphemy, within the Statute. The Statute defines in what blasphemy shall consist. The blasphemy must be wilfully denying God, cursing or contumeliously reproaching God, his creation, government and final judging of the world, cursing or reproaching Jesus Christ or the Holy Ghost, or cursing or contumeliously reproaching the Holy Scriptures, by exposing them or any part of them, to contempt and ridicule. Expressing a disbelief in the miracles, and in the Christian doctrine of the resurrection, is none of these things described in the Statute. It is not denying God. It is not cursing nor contumeliously reproaching God, his creation, government and final judging of the world; for if professing a disbelief in the resurrection, be denying God's final judging of the world, it is not a contumeliously reproaching that final judging of the world. It is not a cursing or reproaching Jesus Christ, or the Holy Ghost. It is not a cursing nor contumeliously reproaching the Holy Scriptures, by exposing them or any part of them to contempt and ridicule. If the doctrine advanced, or the disbelief professed by the defendant, be contrary to the doctrines and belief contained in the Scriptures, yet there is no cursing nor contumeliously reproaching any person or thing, as is required to bring a case within the Statute against blasphemy. A simple denial of God is within the Statute. But in all other cases, there must

be more than a denial, there must be a cursing or contumeliously reproaching of the persons or things described in the law, to bring a case within the purview, and operation of the Statute.

Gentlemen. It cannot be contended that because doctrines are denied, which the Court and Jury may believe to be contained in the Scriptures, therefore the Holy Scriptures are exposed to contempt and ridicule, and the Statute against blasphemy is violated. This would be putting an enormous strain upon this penal statute, and the consequences would be in the highest degree alarming. No man would be safe whose opinions in religion might be at variance, with those who might happen at the time, to occupy the seats of the Court, and the Jury. What chance would a Unitarian stand for an acquittal, with an Orthodox Court and Jury? If such a doctrine be sound, the Orthodox Court and Jury would be bound by their oaths and consciences, to convict the Unitarian, who should profess his belief, of blasphemy, for the Orthodox do not consider the Unitarian doctrines to be the doctrine of the Scriptures. And if maintaining a doctrine contrary to the doctrine of the Scriptures, be an offence within the Statute, it is impossible that an Unitarian maintaining his sincere opinions could escape a conviction for blasphemy, when tried by an Orthodox Court and Jury. In the same way, and upon the same principles, the Orthodox believer maintaining his sincere opinions, would be in danger of conviction of blasphemy, by a Unitarian Court and Jury, for the Unitarians hold that the Orthodox faith is not the Scripture faith delivered to the Saints. Thus the Trinitarians in possession of the Judiciary, might convict the Unitarian of blasphemy, and the Unitarian in turn, when they should hold the Judicial power, might retort upon their adversaries. And one sect after another, of the hundreds and perhaps thousands into which Christians are divided, might tyrannize over their opponents, and convict them of blasphemy, and all this under the same statute. That which might be considered the true doctrine one day, would be the next adjudged blasphemy, according to the changing success of various religious parties, obtaining one after another, the political power of the State, and the means of oppressing their adversaries. The doctrine that expresses a disbelief of what the Court and Jury may consider the true Scripture faith, is exposing the Holy Scriptures to contempt and ridicule, and therefore blasphemy leads inevitably to the alarming conclusion, that every expression of disbelief in the prevailing religious opinion is blasphemy. This would destroy

all freedom of conscience, and render the minority the slaves or victims of the majority, in a matter, in which every man feels it his right and duty, to bear witness of the faith that is in him.

Gentlemen. For the purposes of the argument, let us for a moment admit, the position to be correct, that an expression of disbelief in what the Court and Jury may consider to be the Scripture doctrine, is exposing the Holy Scriptures, to contempt and ridicule, and consequently is blasphemy by the Statute. Let us now suppose a Roman Catholic Jury in your places and a Protestant arraigned before them, and on trial, for denying the real presence, the actual mysterious existence of the body and blood of Jesus Christ, in the Holy Sacrifice of the Mass, of the Roman Catholic Church. Must not a pious Catholic Jury according to this doctrine, following the dictates of their consciences, and the obligations of their oaths, convict the Protestant of blasphemy? The Catholics in this country were the earliest proclaimers of the principles of universal toleration, and I feel assured from my knowledge of their character, they would go as far as any Christians in the United States, in defence of the cause of religious freedom. But they could not in the case avoid convicting the Protestant, for he has denied and contemned what in their opinion, is a truth expressed in the most plain, and clear manner in the Holy Scriptures. Now look on another picture. Suppose a Roman Catholic on trial before a Protestant Jury, for asserting the doctrine of the real presence. By the same reasoning and under the same Statute, he must be convicted by the Protestant Court and Jury, for maintaining a doctrine, which they do not believe to be contained in, and consider contrary to the Holy Scriptures. Carry this matter a little further, and by the same kind of reasoning, by which it is attempted in this indictment to bring the defendant's case, within the Statute, every prevailing denomination having the Court and Jury of their persuasion, may oppress, persecute, convict as blasphemers, and condemn to the dungeon, the pillory, and the gallows, all who dare to differ from them in opinion.

Do not the Unitarians accuse the Orthodox of blaspheming God? What says Mr. Jefferson, a zealous Unitarian, who expresses in one of his latest letters, the hope, that every young man in the United States will die an Unitarian? What said the Republican Patriarch almost with his latest breath? He accuses, in the letter, which has been before referred to, Calvin of "blaspheming" God. Blaspheme is the word he uses. What says Dr. Channing? He accuses the Orthodox of

"calumniating" God. Calumniating is the word used by this distinguished divine, which is the same thing as "contumeliously reproaching," the words used in the Statute against Blasphemy. The following is an extract from Dr. Channing's sermon preached at New York, December 7, 1826.

Suppose then, that a teacher should come among you, and should tell you, that the Creator, in order to pardon his own children, had erected a gallows in the centre of the universe, and had publicly executed upon it, in room of the offenders, an Infinite Being, the partaker of his own Supreme Divinity; suppose him to declare, that this execution was appointed, as a most conspicuous and terrible manifestation of God's justice and wrath and of the infinite wo denounced by his law; and suppose him to add that all beings in Heaven and earth are required to fix their eyes on this fearful sight, as the most powerful enforcement of obedience and virtue. Would you not tell him, that he CALUMNIATED his maker? Would you not say to him, that this central gallows threw gloom over the universe: that the spirit of a government, whose very acts of pardon were written in such blood, was terror, not paternal love; and that obedience, which needed to be upheld by this horrid spectacle, was nothing worth? Would you not say to him, that even you, in this infancy and imperfection of your being, were capable of being wrought upon by nobler motives, and of hating sin through more generous views; and that much more the angels, those pure flames of love, need not the gallows and an executed God, to confirm their loyalty? You would all so feel at such teaching as I have supposed; and yet how does this differ from the popular doctrine of atonement? According to this doctrine, we have an Infinite Being sentenced to suffer as a substitute the death of the cross, a punishment more ignominious and agonizing than the gallows, a punishment reserved for slaves and the vilest malefactors; and he suffers this punishment, that he may show forth the terrors of God's laws, and strike a dread of sin through the universe. I am indeed aware that multitudes who profess this doctrine, are not accustomed to bring it to their minds distinctly in this light; that they do not ordinarily regard the death of Christ as a criminal execution, as an infinitely dreadful infliction of justice, as intended to show, that, without an infinite satisfaction, they must hope nothing from God. Their minds turn by a generous instinct from these appalling views to the love, the disinterestedness, the moral grandeur and beauty of the sufferer; and through such thoughts they make the cross a source of peace, gratitude, love, and hope; thus affording a delightful exemplification of the power of the human mind to attach itself to what is good and purifying in the most irrational system. But let none on this account say, that we misrepresent the doctrine of atonement, the primary

and essential idea of which is, *the public execution of a God*, for the purpose of satisfying justice and awakening a shuddering dread of sin.

In the above extract Dr. Channing charges the preachers of the doctrine of the atonement, with "calumniating" God. If this be correct, they are guilty of blasphemy by the Statute on which the defendant is indicted. Suppose the eloquent Professor Stuart, the author of the noble letter on Religious Liberty, to be indicted for this offence for preaching the doctrine of the atonement, handed down to him from his Pilgrim Fathers, and the author of this sermon to be his Judge. Must he not be convicted of calumniating God by that Judge? Calumniating God is contumeliously reproaching God, and this is the very offence described in the Statute. Again, suppose the learned author of this sermon to be indicted for blasphemy for denying the doctrine of the atonement, and Professor Stuart to be the Judge. All his sincerity and learning could not save him, if professing a disbelief of what the Court might deem to be the doctrine of the Holy Scriptures, be an offence against the Statute. There seems to be a dilemma here, from which it is difficult to escape. Either Dr. Channing is right or he is wrong. If he is right, then the preachers of the doctrine of the atonement are in peril of this law. If he is wrong, then he is in peril himself, for denying and attacking that doctrine. You see the fatal absurdities and dangers, into which this unfortunate prosecution is leading us, the farther we advance; and we are now, but on the threshold of the defence.

Gentlemen. Before leaving the consideration of the facts of this case, and entering on the vast field of legal and Constitutional ground which opens before us, let us pause and review that over which we have already travelled. You will recollect with relation to the first article, that it is contended, as a matter of fact, that it was published without the authority of the defendant, and in his absence from the city, and contrary to the established regulations of his printing office. It has been asked by the Court, why he has not disavowed it. The answer is a plain one, the question is not whether he has retracted, but whether he has committed any offence. But he was not bound to disclose his defence till he came here. He was not bound to disclose, nor has he disclosed, nor will he disclose, the name of the young man, who inadvertently published in the Investigator, the article complained of, and

light up the faggot to destroy him. When this trial shall be finished, Mr. Kneeland will publish his decided condemnation of that article, and his regret, that it found its way into his newspaper. It has therefore been contended that morally and legally the defendant is not responsible for the publication. It is also contended, that the article, even were he legally responsible, is not a violation of the letter of this penal Statute against blasphemy.

You will recollect with respect to the second article, the subject of the Indictment, that it has been contended, that it was no more than the first within the letter of this Statute, however exceptionable its character.

You will recollect with respect to the third article complained of in the Indictment, that it has been contended, that there is no denial of any doctrine, no cursing, no contumeliously reproaching of any person or thing ; but a calm profession in mild terms of a mere disbelief in the creed of the Universalists ; in the Divinity of Jesus Christ, in the miracles, and the Christian doctrine of the resurrection. I now leave and joyfully leave the facts, and doctrinal parts of this case, and approach the ground, which I know better, and can tread with a bolder step, the law and the Constitution.

Gentlemen of the Jury. The first position of law, which I assume is, that the Jury are the final judges of the law, of every criminal case, where a general verdict of guilty or not guilty is returned. The Jury may render a special verdict returning the facts of the case, and referring the responsibility of the decision of the law arising upon those facts to the Court. But a general verdict necessarily includes a decision of the law, as well as of the facts, and the responsibility is on the Jury. By a verdict of guilty you declare, that the facts, alleged in the Indictment, are proved, that they are contrary to the statute on which the prosecution is founded, and that the statute is a Constitutional law of the land. You cannot avoid the decision of the law questions when a general verdict is returned. You cannot conscientiously shelter yourselves from responsibility, in giving a general verdict against your own judgment, by yielding up that judgment, to the authority of the opinion of the Court. You are bound to listen with respect to the instructions you may receive from the Bench, but after all your own consciences must be your guides, and upon you rests the final responsibility. You have no right to surrender your own honest convictions to any authority. This is the doctrine of the criminal law, and by it you should be govern-

ed. The Court have a right to give you their views of the law, but the Court has no power to compel you to adopt their views. Why are you called from the ranks of the people to take a part in judicial proceedings? Is it not to guard the people's rights from violation? Else the whole business of administering justice would be transacted by the Court, without the intervention of a Jury. If there ever was a case, in which a Jury should independently and firmly maintain their right, to decide the law in a criminal case, it is a case like the present, where are drawn in question the most important constitutional privileges, relative to the freedom of speech, the liberty of the press, and the rights of conscience. The people are good judges, and the proper guardians of the Constitution. It is the people's law, made by the people, for the protection of the people, and as a bridle upon Legislative and Judicial usurpations and tyranny, and it must be maintained by the people, not only at the ballot box, but also in the Jury box. The defendant looks to you to vindicate the principles of religious liberty, and the rights of conscience, and to maintain in this cause, his constitutional rights. His rights did I say? Not only his, but those of yourselves, and your fellow citizens throughout this Commonwealth.

Gentlemen. The next position, which I shall attempt to confirm, will be that which has been repeatedly assumed, in relation to the construction to be given to a penal statute. A penal statute must be construed with strictness. A case must be clearly, and without putting a strain upon the words, brought within the letter of a penal statute, to be within its operation. It is not sufficient that the acts proved, are considered to be as bad, or even worse in their tendency, than those prohibited in the law. They must be the very acts described and prohibited by the language of the statute, giving that language not an enlarged construction to embrace the case, but a strict limited construction in favor of the accused. In every case of a prosecution founded on a penal statute, the question is, whether the offence charged, be the precise offence described in the written law, and if the defendant's case be not within the very letter, he must be acquitted. This position is sustained, by the mild and humane principles of criminal jurisprudence, by which our Courts and Juries profess to be guided. It is sustained by the highest authorities in the law, I refer to the authority of the great names of Bacon and Blackstone. Lord Bacon thus informs us in his *MAXIMS OF THE LAW*.

As it is a rule that penal statutes shall not be taken by equity, and the statute of 1 Ed. VI. enacts that those that are attained for stealing of horses shall not have their clergy, the judges conceived, that this did not extend to him that should steal but one horse, and therefore procured a new act for it in 2 Ed. VI. cap. 33. And they had reason for it, as I take the law; for it is not like the case upon the statute of *Glocest.* that gives the action of waste against him that holds *pro termino vite vel annorum*. It is true, that if a man holds but for a year he is within the statute; for it is to be noted, that penal statutes are taken strictly and literally only in the point of defining and setting down the fact and the punishment, and in those clauses that do concern them, and not generally in words that are but circumstances and conveyance in the putting of the case, and to see the diversity; for if the law be, that for such an offence a man shall lose his right hand, and the offender hath had his right hand before cut off in the wars, he shall not lose his left hand, but the crime shall rather pass without the punishment which the law assigned, than the letter of the law should be extended; but if the statute of 1 Ed. VI. had been, that he that should steal one horse should be ousted of his clergy, then there had been no question at all, but if a man had stolen more horses than one, but that he had been within the statute, *quia omne majus continet in se minus*.

You see that this doctrine was anciently* pushed to the extreme extent of causing the acquittal of a person, who had stolen one horse, and was indicted on the statute relating to the stealing of horses. In modern times a more rational construction has been given in a similar case, and a party who had stolen one bank note, was holden to have violated the statute, prohibiting the stealing of bank notes. Sir William Blackstone fully confirms in his Commentaries the principles proclaimed by the renowned lawyer, statesman, and philosopher, Lord Bacon.

PENAL statutes must be construed strictly. Thus the statute 1 Edw. VI. c. 12. having enacted that those who are convicted of stealing horses should not have the benefit of clergy, the judges conceived that this did not extend to him that should steal but one horse,* and therefore procured a new act for that purpose in

* Lord Hale thinks, that the scruple of the judges did not merely depend upon the words being in the plural number, because no doubt had ever occurred respecting former statutes in the plural number; as, for instance, it was enacted by the 32 Hen. VIII. c. 1. that no person convicted of burning *any dwelling houses* should be admitted to clergy. But the reason of the difficulty in this case was, because the statute of 37 Hen. VIII. c. 8. was expressly penned in the singular number; *If any man do steal any horse. mare, or filly*: and then this statute thus varying the number, and at the

the following year. And to come nearer our own times, by the statute 14 Geo. II. c. 6. stealing sheep, or other cattle, was made felony without benefit of clergy. But these general words, "or other cattle," being looked upon as much too loose to create a capital offence, the act was held to extend to nothing but mere sheep. And therefore, in the next sessions, it was found necessary to make another statute, 15 Geo. II. c. 34. extending the former to bulls, cows, oxen, steers, bullocks, heifers, calves, and lambs by name.

STATUTES against frauds* are to be liberally and beneficially expounded. This may seem a contradiction to the last rule; most statutes against frauds being in their consequences penal. But this difference is here to be taken; where the statute acts upon the offender, and inflicts a penalty, as the pillory or a fine, it is then to be taken strictly; but when the statute acts upon the offence, by setting aside the fraudulent transaction,† here it is to be construed liberally.

same time expressly repealing all other exclusions of clergy introduced since the beginning of the reign of Hen. VIII. it raised a doubt, whether it were not intended by the legislature to restore clergy where only one horse was stolen, 2 H. P. C. 365. And it has since been decided that where statutes use the plural number, a single instance in such cases will be comprehended; as the statute 2 Geo. II. c. 25 s. 3. enacts, that it shall be felony to steal any bank notes, and has been adjudged to be felony to steal one bank note. *Leach* 1. *Hassell's Case*.

* These are generally called remedial statutes. And it is a fundamental rule of construction, that penal statutes shall be construed strictly, and remedial statutes shall be construed liberally. It is one of the laws of the twelve tables of Rome, that whenever there was a question between liberty and slavery, the presumption should be on the side of liberty. This excellent principle our law has adopted in the construction of penal statutes: for whenever any ambiguity arises in a statute introducing a new penalty or punishment, the decision shall be on the side of lenity and mercy; or in favor of natural right and liberty: or, in other words the decision shall be according to the strict letter in favor of the subject. And though the judges in such cases may frequently raise and solve difficulties contrary to the intention of the legislature, yet no further inconvenience can result, than that the law remains as it was before the statute. And it is more consonant to principles of liberty, that the judge should acquit whom the legislature intended to punish, than that he should punish whom the legislature intended to discharge with impunity. But remedial statutes must be construed according to the spirit: for in giving relief against fraud, or in the furtherance and extension of natural right and justice, the judge may safely go even beyond that which existed in the minds of those who framed the law.

† And therefore it has been held, that the same words in a statute will bear different interpretations according to the nature of the suit or prosecution instituted upon them. As by the 9 Ann. c. 14. the statute against gaming; if any person shall lose at any time or sitting 10*l*. and shall pay it to the winner, he may recover it back within three months; and if the loser does not within that time, any other person may sue for it, and treble the value besides. So where an action was brought to recover back fourteen guineas, which had been won and paid after a continuance at play, except an interruption during dinner, the court held the statute was remedial, as far as it prevented the effects of gaming, without inflicting a penalty,

How strong is the illustration of this maxim, that a penal statute is to be construed strictly, in the case, where precisely opposite constructions were given, to the same words in the same statute, according as the object and effect of the suit, were to operate on the offence, or upon the offender. In the one case, the liberal construction was applied, when the object of the suit was to operate on the offence, and recover back the money lost at gaming. In the other, when the object was to operate on the offender and punish him, the strict construction was applied. You see the extreme caution, with which enlightened Courts, construe a penal statute. Apply the principles of construction to the articles complained of in the present indictment, and not one of them will be found within the letter of the Statute against Blasphemy, on which the prisoner is indicted.

The learned Counsel for the Commonwealth stated in his opening address, that the degrading punishments prescribed in the Statute against Blasphemy have been abolished. He is mistaken. The Court still hold the power, in case the prisoner shall be convicted, to fasten him to the pillory, and set him on the gallows; a fine spectacle to be exhibited in State Street, in order to shew the people of Massachusetts and the United States, how gloriously we carry out in Boston, the principle of our Constitution, that no person shall be hurt, molested or restrained in his person, liberty or estate, for his religious profession or sentiments.

Judge Thatcher here observed, that law is repealed, and there is no such punishment in this Commonwealth. The act of 1812, chap. 134, abolished such punishments.

Mr. Dunlap. We will examine this matter a little, and we shall soon see, whether I am right or wrong. I have not come to the argument of this cause, without having endeavored to understand the law of it, and I know that I am right, and will read the statutes and prove it. The Statute against Blasphemy on which the indictment rests, contains these words.

AN ACT AGAINST BLASPHEMY.

BE it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That if any

and therefore, in this action, they considered it one time or sitting; but they said, if an action had been brought by a common informer for the penalty, they would have construed it strictly in favor of the defendant, and would have held, that the money had been lost at two sittings. 2 Bl. Rep. 1226.

person shall wilfully blaspheme the holy name of God, by denying, cursing, or contumeliously reproaching God, his creation, government or final judging of the world, or by cursing, or reproaching Jesus Christ, or the Holy Ghost, or by cursing or contumeliously reproaching the Holy Word of God, that is, the canonical scriptures, contained in the books of the Old and New Testaments, or by exposing them, or any part of them, to contempt and ridicule; which books are as follows: Genesis, Exodus, Leviticus, Numbers, Deuteronomy, Joshua, Judges, Ruth, Samuel, Samuel, Kings, Kings, Chronicles, Chronicles, Ezra, Nehemiah, Esther, Job, Psalms, Proverbs, Ecclesiastes, the Song of Solomon, Isaiah, Jeremiah, Lamentations, Ezekiel, Daniel, Hosea, Joel, Amos, Obadiah, Jonah, Micah, Nahum, Habakkuk, Zephaniah, Haggai, Zechariah, Malachi, Matthew, Mark, Luke, John, Acts, Romans, Corinthians, Corinthians, Galatians, Ephesians, Philippians, Colossians, Thessalonians, Thessalonians, Timothy, Timothy, Titus, Philemon, Hebrews, James, Peter, Peter, John, John, John, Jude, Revelations; every person so offending shall be punished by imprisonment not exceeding twelve months, by sitting in the pillory, by whipping, or by sitting on the gallows, with a rope about the neck, or binding to the good behavior, at the discretion of the Supreme Judicial Court before whom the conviction may be, according to the aggravation of the offence.

The act of 1812, chapter 134, is as follows.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That whenever any person or persons shall or may be prosecuted to conviction before the Supreme Judicial Court of this Commonwealth, for any crime or misdemeanor, which is now by law punishable by whipping, standing in the pillory, sitting on the gallows, or imprisonment in the common goal of the county, such court may, at their discretion, in cases not already provided for, in lieu of the punishments aforesaid, order and sentence such convict or convicts to suffer solitary imprisonment, for a term not exceeding three months, and to be confined to hard labour, for a term not exceeding five years, according to the aggravation of the offence. [Feb. 27, 1813.]

The act of 1826, chapter 105, to which the Sheriff has called the attention of the Court, is as follows.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That no person, convicted of any offence, before any court of this Commonwealth, shall ever be punished by whipping; but the court, having

jurisdiction of the case, may, and shall, sentence such convict to a fine, to the use of the Commonwealth, not exceeding two hundred dollars, or to imprisonment for a term not exceeding six months, according to the aggravation of said offence.

Thus you see Gentlemen that I was correct. The punishment of whipping only is abolished in this Commonwealth. In relation to the punishments of standing in the pillory, and sitting on the gallows, the Court "may at their discretion" order different punishments "in lieu of the punishments aforesaid." But the Court at their discretion may not substitute other punishments, and may in case of a conviction, sentence the defendant to standing in the pillory, and sitting on the gallows. The whole of the punishments prescribed in the statute, except in relation to the whipping, is completely at the discretion of the Court. The whipping post alone is taken out of the Statute against Blasphemy. The pillory and the gallows stand there in all their former terrors. I readily admit, that I do not expect in case the defendant shall be convicted, that he will be sentenced to the punishments of standing in the pillory and sitting on the gallows. It would be making too hazardous an experiment at the present day of the strength of a penal statute respecting religion, and would rouse public indignation against both the punishment and the prosecution. The public sentiment in our country is decidedly against such horrid spectacles, even when men have committed the most dangerous and wicked acts, and least of all would such punishments be endured in a case like the present, for errors of opinion in matter of faith. But let the spirit of religious fanaticism and persecution rage. Let such prosecutions as the present be encouraged and become frequent. Public sentiment would soon become depraved. Humanity and toleration would soon become extinguished in the breasts of men. The most cruel punishments would be resorted to, by those who might sincerely believe that they were advancing the cause of human happiness, and the glory of God, by immolating those who might differ from them in opinion. Let the influence of liberal and enlightened views be destroyed, and bigoted and intolerant opinions prevail, and you will soon find the Statute against Blasphemy in full operation, and the barbarous punishments of an iron age revived. Narrow minded Judges may be placed on the Bench. Sectarian feelings may furiously rage with Juries. Unjust prosecutions may be instituted, and unrighteous convictions obtained. Cruel and disgraceful punishments may be

inflicted, more discreditable to those, who inflict, than those who suffer them, and all the ancient glories of the pillory and the gallows, the rack and the stake, as engines of religious conversion, may be restored.

Gentlemen of the Jury. Let us now resume our track, and return to the Statute against Blasphemy, which must be closely and carefully examined, if there be a desire to give the defendant a fair trial, and to do justice in this cause. I shall contend upon general principles relative to human legislation, that the Statute cannot be enforced by jurymen, without renouncing their reason or abandoning their consciences. The Legislature has attempted to legislate on a subject too vast for their understandings to comprehend, and altogether, beyond human jurisdiction. It is a law upon an infinite subject, and therefore beyond the grasp of finite faculties. It seems either the height of human presumption, or the lowest degree of human folly, for a legislature to attempt to make laws on a subject immeasurably beyond their reach. No human intellect can comprehend, no human language define it. Man adores, but he cannot find out God. Doth not the Scripture say "canst thou by searching find out God; canst thou find out the Almighty unto perfection"? Even the ideas, which his mind can conceive, he cannot express by words, "the daughters of earth," mere imperfect human inventions. Shall a worm of the dust, dare to legislate upon such a subject, as the Great Creator of the vast Universe, when he cannot clearly understand even the ideas which crowd upon his own mind, and accurately express even his own conceptions? In what sense did the Legislature use the word God in this Statute? If it cannot be ascertained, then the law is unintelligible, and cannot be enforced, for promulgation is essential to the validity of a law. That cannot be promulgated or made known, to those who are required to obey, which the law giver himself did not know or understand. If the Legislature had no distinct ideas on this subject, or have not used words in an intelligible manner, then they could not make and have not made their law known to others, and consequently their declaration is no law, and their ordinance cannot be, has not been promulgated, and is destitute of validity. In what sense I again ask did the Legislature use the word God in this Statute. An illustration will show you the difficulty in which an attempt to legislate upon such a subject, must be involved. I will suppose a learned Pundit from the Courts of the East Indies, and a holy Bramin from the temples of Hindostan, and a Chinese philosopher to arrive in this land of

freedom. The Pundit is a learned lawyer of the Gentoo Courts; that eminent Judge and scholar Sir William Jones describes the Pundits as the most acute and subtle jurisprudents, and accomplished in all the learning of the East, and he found himself obliged to learn the Hindoo language to render himself a match for them. The strangers come to seek the protection of our free institutions, and to become citizens of our Republic, pursuant to the laws and Constitution of the United States. Those laws and that glorious Constitution only require the qualifications of residence for a fixed period, a good moral character, an attachment to the principles of the Constitution of the United States, and a renouncement of all titles of nobility and all foreign allegiance. They bring with them, like Rachel the wife of Jacob and the mother of Joseph and Benjamin, the Gods of their native countries, become naturalized, openly profess their respective creeds, adore their Gods and deny all other Gods. The Chinese erects altars and places upon them the images of the Gods of his worship, offers up the incense of his adoration and denies every other God. Let the Bramin stand before us, clad in his sacerdotal vestments of dazzling whiteness, and he would excite as much admiration, as did the holy priests of Brama visiting the camp of Alexander, when the ancient conqueror of the world pitched his tent on the bank of the Ganges. This priest of Brama pours forth his adoration to the God or Gods of his religion, and denies the God of every other worship. Do the Pundit, the Chinese and the Bramin, deny God within the meaning of this law, and violate the Statute against Blasphemy? I care not in which way this question may be answered. Answered it must be, one way or the other, either in the affirmative or negative, and an answer either way will involve us in all the mazes of confusion and uncertainty, and lead us into a labyrinth, from which the makers of this Statute can furnish no clue by which we can be extricated.

It will demonstrate that this subject is one in which human legislatures and human tribunals cannot move a step, without plunging themselves into an abyss of darkness and confusion.

The answer to my question, which we are considering is, that God is not denied, and this Statute against Blasphemy is not violated. Upon what ground must this answer be given? It must be upon this ground and none other, that the word God is used in the Statute in a general sense. If so, it includes all the various Gods, which are the objects of human belief and worship. Follow me a little further, in tracing the consequences of this answer. The moment this ground shall

be assumed, and the Hindoo Lawyer and Priest, and the Chinese considered not to have broken the Statute, and the word God in the Statute shall be understood in a general sense, then the heathen idolatry will be as much protected by this Statute, as the belief of the true God, the God of Abraham and Isaac and Jacob, and Jesus Christ. The idolater may call upon this Court and Jury to enforce this Statute, against those who deny his Gods, as well as the believer in the true God call upon you to inflict the penalties of this law upon the prisoner at the bar. The Statute therefore when examined in this point of view, is found to be a law for the protection of idolatry. It would have better served for a decree to have been enrolled in the Pantheon of Rome, the Temple of the Gods of all nations, and never should have been promulgated from the Halls of the State House of a Christian people.

Let us now suppose the answer to my question to be the other way, in the affirmative, that the Pundit, the Bramin, and the Chinese deny God, and violate the Statute against Blasphemy. Let us examine and trace out the consequences of this answer to the enquiry whether the Statute be broken. We shall soon find ourselves as deeply involved in inextricable confusion, as we were by the answer in the negative to that question. It must be assumed that they have denied God, because they have denied the true God—the God of Abraham and Isaac and Jacob,—and Jesus Christ. Yet these persons who have broken this Statute against Blasphemy, because they deny God, are allowed to be sworn as witnesses in our courts of justice, because they believe in God. The profession of their belief subjects them, to be placed at the bar as criminals, and the profession of the same belief also entitles them to be admitted to the stand as competent witnesses. Is not this the law? The law books furnish us with ample information on this point. Phillips in his Law of Evidence, lays down the law in the following manner.

Lord Coke, indeed, says generally, that an *infidel* cannot be a witness, in which denomination he intended to comprise Jews as well as Heathens: and Mr. Serjeant Hawkins thought it a sufficient objection to the competency of a witness, that he believed neither the Old nor the New Testament. Lord Hale, however, was of a different opinion, and strongly points out the unreasonableness of excluding indiscriminately all Heathens from giving evidence, as well as the inconsistency of compelling them to swear in a form which they may possibly not consider binding. "It were a very hard case, he says, if a murder, committed here in

presence only of a Turk or a Jew, should be punishable, because such an oath should not be taken, which the witness holds binding, and cannot swear otherwise, and possibly might think himself under no obligation, if sworn according to the usual style of the courts of England." All doubts upon this subject, however, are now removed. In the case of Omichund and Barker, (which came before Lord Chancellor Hardwicke, assisted by Lee, C. J. Willes, C. J. and Parker, C. B.) it was solemnly decided, that the depositions of witnesses professing the Gentoo religion, who had been sworn according to the ceremonies of their religion under a commission out of Chancery, ought to be admitted in evidence. And it may now be considered as an established rule, that infidels of any other country, who believe in a God, the avenger of falsehood, ought to be received here as witnesses.

The law on this subject has thus been established in the United States.

And every person who believes in the obligation of an oath, whatever may be his religious creed, whether *Christian, Mahomedan, or Pagan*, or whether he disbelieves them all, is an admissible witness; and may testify in a court of justice, being sworn according to that form of oath, which, according to his creed, he holds to be obligatory. *Curtiss v. Strong*, 4 Day, 51. S. C. *Swift's Ev.* 48.

Gentlemen. Are we in light, or in darkness and confusion worse confounded? The Bramin of a spotless life, an example of earthly purity, comes upon the stand to testify as a witness. He is examined respecting his creed. He declares that he believes in the religion of his Bramin fathers, and denies the God of every other religion. He is permitted to testify, and yet may be indicted for blasphemy. The same belief, which qualifies him to be sworn, renders him liable, to be punished. On the stand he is considered to believe in God. In the bar of the criminals he is adjudged to deny God. One day he is admitted as a witness, because he believes in God. The next day he is placed in the pillory or on the gallows, because he denies God. What fatal inconsistencies are there under the same system of laws! What fatal absurdities flow, from human legislation, upon this incomprehensible subject! What an account would the learned Pundit give, in returning to his native country, of the wisdom and justice of the laws of our country, whence we are sending out Missionaries to Hindostan to convert his brethren and countrymen to Christianity? What emotions would the Bramin, returning to his native land, and giving an account of the laws on the subject of religion in this Christian land, excite in the breasts of his

followers! Would the cause of Christianity make much progress, among those followers, when the priest whom they love and venerate, should tell them, that by our Christian laws, a man may be exposed to the most ignominious punishments, for professing a belief, which in solemn proceedings in the courts of justice entitles him to be received as a witness.

Gentlemen. You see the consequences, which result from an answer to my question, in either the affirmative or negative. The slightest examination of this statute confirms the position, which I have attempted to establish, that the subject is one which does not and cannot belong to the consideration or jurisdiction of human legislatures and tribunals. Human legislatures cannot clearly express or carry out their own intentions, for the subject is so extensive, that the moment they enter upon it, they are lost in the vastness of the field which opens to the view. You see here an illustration. If the word God in this statute be used in a general sense, then the flood gates of idolatry are opened, and we are deluged with Pagan superstitions. If it be used in a limited sense, then the belief, which qualifies a man for the stand as a witness, also qualifies him for the bar as a criminal, and for the pillory and the gallows as a convict. While the legislature are prohibiting infidelity, they are protecting idolatry, or else subjecting to infamous punishments, those, whom the law deems worthy of credit, in the most important transactions of this life, the solemn proceedings of courts of justice, in which are involved, the fortunes, the reputation, the liberties and the lives of the citizens.

I will propose another question: Is the word God in the Statute used in the Trinitarian or the Anti-Trinitarian sense? This question like the other, must be answered, yea or nay, in the affirmative or negative. The word God if used in any intelligible sense, must have been used in the Trinitarian or Anti-Trinitarian sense. If in the Anti-Trinitarian sense, then a belief is established by law, which according to the Trinitarian creed is a heresy, and the Trinitarian cannot consistently with the dictates of his conscience, enforce the law. It is an affair in which a conscientious man cannot and dares not temporise. On the other hand if this word be used in the Trinitarian sense, then the conscientious Unitarian cannot enforce the law. No human authority can require in a solemn matter of conscience, a man, to carry into effect a law, which in his belief, sustains a false creed, for in such a case he becomes an accessory to the sin of spreading and sustaining false doctrines, and will not stand

excused in his own conscience. This is not the only mischief: it opens the way to cruel persecutions. If the word God in the Statute be used in the Trinitarian sense, the Trinitarian can rightfully, if the law be valid and constitutional, convict the Unitarians of blasphemy, for denying the God described and intended in the Statute. So on the other hand, if the word God be used in the Statute in the Anti-Trinitarian sense, the Unitarians can rightfully, if the law be valid and Constitutional, convict the Trinitarian of blasphemy, for denying the God described and intended in the Statute. Professor Stuart says that the Reverend Mr. Belsham declares that the Unitarians do not worship the same God with the Orthodox. He says, farther, that in the Unitarian publications, the Orthodox are charged with worshipping the "Devil." Mr. Jefferson says, Calvin "blasphemed" God, and that his God, is not the God, whom he and President Adams worshipped "but a demon of malignant spirit." Dean Swift says Calvin "invented a new Deity." Dr. Channing charges the Orthodox, with calumniating their Maker. Would not the Orthodox before a Unitarian Court and Jury, be in some danger under this law, if the word God in the Statute be used in the Unitarian sense, with all these heavy charges hanging over their heads? Will an Orthodox man on the Jury, if the word God be used in the Statute in the Unitarian sense, sustain by his verdict, a statute, by which he and his friends may be condemned? Can either a rational Unitarian, or a rational Orthodox Christian, consent by his verdict to sustain a law, which Unitarian or Orthodox Courts and Juries, as either religious sect or party may be in power, may construe or pervert to favor their own opinions, and by which they may persecute, oppress and condemn as blasphemers, and consign to the pillory and the gallows, those who dissent from those opinions? If it be uncertain in what sense, Trinitarian or Anti-Trinitarian, the word is used in the Statute, the danger is the greater. Wretched is the servitude and dangerous the condition of the people, when the laws, the penal laws, and particularly on the subject of religion, are uncertain in their character. Then the citizens may be subject, to alternate persecution, according as the various religious parties rise and fall in the struggles to obtain the political power of the State. If the expression be certain, and the law be clearly a Trinitarian or Anti-Trinitarian Statute, then but one portion of the people can suffer, those who do not profess the established creed. But if the expression in the Statute, be uncertain, then each religious party as it obtains power, will construe it according to its pe-

culiar views, and as one after another predominates, persecute its opponents until in the process of time, in the changing course of events, all may in turn be persecuted. The Unitarians, of all others, should avoid enforcing this Statute by their verdict, for if the Statute be any thing, it is, as will be hereafter shown, a Trinitarian law, by which they may be condemned. As a portion of the Christian family, in numbers but a grain of sand to the multitude on the sea shore, weak in the United States, though strong in political influence in this Commonwealth, they should be the last, to excite or sanction such a prosecution as the present. Let the reproach of an intolerant spirit be once fastened on the Unitarians, and their influence and power, even here, will be instantly annihilated. The poisoned chalice of persecution may be commanded to their own lips, and they may be compelled to drink the bitter draught to the dregs. Surely this consideration, that this may be an Anti-Trinitarian Statute, by which Trinitarians may be condemned, or a Trinitarian Statute by which Unitarians may be condemned, or a Statute with uncertain expression a snare for the religious liberties of the people, should rouse the feelings of all friends of religious freedom of every persuasion against it, and induce them to blot it out of the Statute book, and destroy its effects in courts of justice, by rendering it a dead letter. Do not these considerations tend to show, that this Statute is void, by the general principles on which human legislation depends, being upon a subject wholly beyond the limits of legislative power, and a law which never can be sustained by honest conscientious and intelligent juries, in a land of civil and religious liberty? Is not the whole subject of this law, one exclusively between a man and his God, not between the citizen and the Government? If so, every attempt at legislation in relation to this matter, is an arrogant assumption of the prerogatives of Heaven, and a violation of the rights of man.

You perceive how clouds and darkness thicken over this unfortunate prosecution, the more its character is understood, and the more this statute is examined. I have contended that if the Legislature had no distinct ideas on the subject, or have not used intelligible expressions to communicate their ideas, the Statute is not and cannot be promulgated. It is a dead letter, lacking the vital principle, never having had breathed into it the breath of life. There can be no violation of a Statute, till it is made known, and that cannot be made known, which is not intelligible, or which is upon a subject beyond limited human comprehension. The framers of this law had, or had not dis-

inct ideas on the subject on which they were legislating. If they had a clear meaning, they were bound to express themselves clearly, so that there should be no doubt, whether the word God be used in a general or a limited, in a Trinitarian or Anti-Trinitarian sense. If they were groping in darkness themselves, they should not have made a law, which they could not expect to have enforced. What say the Authorities on the subject of the necessity of a law being promulgated or made known, in order to give it validity. Blackstone informs us as follows.

It is likewise "a rule *prescribed*." Because a bare resolution, confined in the breast of the legislator, without manifesting itself by some external sign, can never be properly a law. It is requisite that this resolution be notified to the people who are to obey it.

If our Legislature had published this Statute in the Sanscrit or Chinese languages, no one would have been bound. They might as well have published it in the Sanscrit or Chinese languages, as expressed their law in words and phrases of an indeterminate meaning. Indeed it would have been better if such laws as this Statute had been wrapped up in some language to the people unknown, for then they would be inoperative, ineffectual and harmless. But in the present case, this Statute may be perverted by intolerance and bigotry, to the most dangerous and odious purposes. But suppose the Legislators, who made this penal Statute on the subject of religion, to have been endued with all the intelligence, with which men were ever illuminated. Suppose them to have been wiser than Confucius or Socrates, and as enlightened on the subject of the doctrines of our religion as man can be. How have they displayed this intelligence? Have they informed us in this Statute against denying God, whether that word is to be understood in a Trinitarian or Unitarian sense? No, Gentlemen, we are left in worse than Cimmerian darkness in relation to this matter, for we have just light enough to render "darkness visible," the lurid light gleaming from the faggot of persecution. If the Orthodox believers are correct in their opinions, Belsham and Jefferson and the Unitarian writers may be rightfully convicted of blasphemy for denying God under this Statute, by a Court composed of Professor Stuart for the Judge, and his religious friends for the Jury; for the Unitarians, he says, declare that they do not worship the same God, whom the Orthodox worship, and consequently do not believe in, but deny the God of the

Orthodox. On the other hand, if the Orthodox be incorrect in their opinions, then Professor Stuart and his friends, may be rightfully convicted of blasphemy for denying God, by a Court composed of Dr. Channing for the Judge, and his religious friends for the Jury; for Dr. Channing accuses the Orthodox of "calumniating" their Maker, which is contumeliously reproaching God, the very offence described in the Statute. This is the manner in which the Legislature has left us, in relation to the Statute, which I think can never be sustained by Juries, till judgment and mercy shall flee to "brutish beasts" and men shall lose "their reason."

You have been told, that this is not a matter of conscience, but of law, and that here is a Statute of the Commonwealth, and that it is your duty to sustain it, by your verdict, whatever may be your religious opinions. This is not so. There is a law superior to the Statute, a supreme law, which binds the Legislature and the Judiciary. That law is the Constitution, the provisions of which sacred ordinance bearing on this cause I shall comment upon fully hereafter. There is a power, superior to the Legislature and the Judiciary, which made the Constitution. That power is the people. There is a power superior to the people. That power is the Almighty. In a matter of conscience man is responsible to Him and to Him alone. If a Juror be an Unitarian or a Trinitarian, and believes this Statute made to establish by law an erroneous doctrine, he cannot sustain it. If he be a Christian and believes all penal laws, hostile to the mild spirit of Christianity, he cannot sanction the abuse by his verdict as a Juror, without paltering with his conscience as a Christian. There is no shuffling in a case of conscience. It cannot be surrendered to the authority of any earthly tribunal. No human authority can forge chains for the human conscience. Will you become the weak instruments of your own final condemnation, by sanctioning by your verdict, a Statute, which is either wholly unintelligible, or is so obscure and doubtful in its meaning, that it may be made, in the hands of any sect, which shall become predominant, and hold the control of the political power of the State, a most cruel engine of oppression? Will you condemn this defendant to day, and set an example, and establish a precedent, by which you yourselves may be condemned to-morrow? Will you regard a human law, and disregard the divine law of Christian toleration? Will you this day heckle, twist and spin the hemp, for Abner Kneeland, which to-morrow may be fastened about your own necks? I trust you will not surrender up your consciences, to

the keeping of any authority, and that you will display by your verdict the mild spirit of Christians, and the bold and independent spirit of American freemen. For your own sakes, for the sake of us all, I hope I shall not be disappointed in the high expectations I have formed of your intelligence and independence on this very important occasion.

Does not Professor Stuart, in the passage quoted from his letter, impliedly admit, and assent to the position by Unitarians, that they and the Orthodox "do not worship the same God?" He says the difference between the two parties is "essential." Thus we have it declared from both sides, that they "do not worship the same God," and he justifies the separation of the Orthodox from the Unitarians, upon the ground assumed by their adversaries, and not disputed by Professor Stuart, that they "do not worship the same God."

I again ask, are you to be told, that this is a matter of law, and not of conscience, and that you are not to allow your own opinions in religion to have any effect, on your verdict as Jurors? Suppose such a doctrine had been proclaimed to your Puritan ancestors sitting on Juries, and they had been called upon by the Crown officers, to convict a party, indicted for a violation of some statute, for the support of the Established Religion of England, the mercies of which the Puritans fled from to the wilderness. Would not your Puritan fathers have risen, and with one voice declared, we owe an earthly allegiance, in matters of earthly concernment, to an earthly Sovereign; but in matters of conscience, our allegiance is due only to the King of Kings. We cannot as Jurors, enforce laws, made to sustain doctrines, which as Christians, we believe to be erroneous. Suppose a pious Catholic, to be charged, because of his profession of his belief, and his adoration of the Host, with violating a Statute made to establish a different faith. Would it do to tell the Catholics on the Jury, that the case was a mere question of law, not of conscience? What would they care for all the arguments of this character, and all the instructions of all the Courts in the land, that the Statute was a valid and constitutional law? They would say to the Court, you may send the Catholic at the bar, and the Catholics on the Jury, to the pillory, and the gallows together, but we will let the earth open, and swallow you all up and ourselves, with you, before we will render a verdict, against the dictates of our own consciences. We will not lay perjury on our souls, by declaring by our verdict, that to be true, which, as Christians, we believe to be false. This doctrine, that there is involved,

in prosecutions on penal laws respecting religion, mere questions of law, not of conscience, brings at once into conflict, the law conscience of the Juror, with the conscience of the man which God has implanted in his breast.

Gentlemen. We will now abandon suppositions and hypotheses, and look the Statute in the face. If the Statute be any thing, it is a sectarian law, made to set up an established religion, in this land of liberty, and to compel a belief in the doctrine of the Trinity, by the arguments of the whipping post, the pillory, and the gallows. This is a mode of reasoning in theology, which our Legislature had no right to adopt, and every such law is invalid and unconstitutional. The Legislature is convened to make laws for the people, relative to the business of this life, not to establish creeds in religion. Examine the Statute against Blasphemy, and if it asserts any thing, it asserts and establishes a belief in the Trinity, under the penalties of the whipping post, the pillory, and the gallows. The statute is designed to support that doctrine, and if you this day convict the defendant arraigned before you for its violation, you will confirm the law, and no man, who denies that belief will be safe. Every Unitarian will stand in danger of the punishments prescribed by the law. In order to understand the character of laws, it is usual and proper to look to the manners, opinions and feelings, which prevailed when they were enacted. Were not the people of Massachusetts, at the time of the passage of this law, generally believers in the doctrine of the Trinity, a doctrine revered for so many ages, and still almost universally believed, throughout the ranks of Christians. It was the creed subscribed by the members of most of the churches in the Commonwealth. Was not the Hollis Professor of Divinity, a Trinitarian, agreeably to the statutes of the munificent Baptist founder of the Professorship, which required him to be a person of "sound or Orthodox principles"? These considerations tend to shew, that the Legislature, who made this Statute against Blasphemy, made a Trinitarian statute. An Unitarian Legislature could not have been elected. Indeed there could not have been Unitarians enough found in the various towns, to have composed a Legislature, for that denomination at that time was chiefly confined to Boston and a few other towns in the State. Look to the language of the Statute. It declares blasphemy to consist in denying God, or in contumeliously cursing or reproaching God, or in cursing or reproaching Jesus Christ, or the Holy Ghost. Look at the language of the act. A decisive test of the Trinitarian character of this Statute, is the

provision relating to the Holy Ghost. The Unitarians hold, as I have been taught from my cradle to believe, that there is no such thing, as the Holy Ghost distinct from the Father, and that by the Holy Spirit is to be understood, the Father. Yet the Holy Ghost is actually made distinct from God in this statute. There is no mistake here, there are in this statute, the three persons of the Trinity, as distinctly denoted, as in the creeds of the Church of Rome, and the Church of England, or the Orthodox. Let us compare this Statute with other statutes, on this subject, in order to discover and explain its character. The following are the noted English Trinitarian statutes of modern time. The first is the statute of 1 William and Mary, chap. 18. The thirteenth section requires the following, "profession of Christian faith."

'I *A. B.* profess Faith in God the Father, and in Jesus Christ his Eternal Son, the true God, and in the Holy Spirit, one God blessed forevermore; and do acknowledge the Holy Scriptures of the Old and New Testament to be given by Divine Inspiration.'

The seventeenth section of this act, which is called the Act of Toleration is as follows :

Provided always, and be it further enacted by the Authority aforesaid, That neither this Act, nor any Clause, Article, or Thing herein contained, shall extend or be construed to extend to give any Ease, Benefit, or Advantage to any Papist or Popish Recusant whatsoever, or any Person that shall deny in his preaching or writing the Doctrine of the Blessed Trinity, as it is declared in the aforesaid Articles of Religion.

The following is a statute of the same Reign passed in the ninth and tenth of William and Mary.

An act for the more effectual suppressing of Blasphemy and Profaneness.

'Whereas many Persons have of late Years openly avowed and published many blasphemous and impious Opinions, contrary to the Doctrines and Principles of the Christian Religion, greatly tending to the Dishonor of Almighty God, and may prove destructive to the Peace and Welfare of this Kingdom: Wherefore for the more effectual suppressing of the said detestable Crimes be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That if any Person or Persons, having been

educated in, or at any Time having made Profession of the Christian Religion within this Realm, shall by Writing, Printing, Teaching, or advised Speaking deny any one of the Persons in the Holy Trinity to be God, or shall assert or maintain there are more Gods than one, or shall deny the Christian Religion to be true, or the Holy Scriptures of the Old and New Testament to be of Divine Authority, and shall upon Indictment or Information in any of his Majesty's Courts at *Westminster*, or at the Assizes, be thereof lawfully convicted by the Oath of two or more credible Witnesses; such Person or Persons for the first Offence shall be adjudged incapable and disabled in Law, to all Intents and Purposes whatsoever, to have or enjoy any Office or Offices, Employment or Employments, Ecclesiastical, Civil or Military, or any Part in them, or any Profit or Advantage appertaining to them, or any of them: And if any Person or Persons so convicted as aforesaid, shall at the Time of his or their Conviction, enjoy or possess any Office, Place or Employment, such Office, Place or Employment shall be void, and is hereby declared void: And if such Person or Persons shall be a second time lawfully convicted as aforesaid, of all or any the aforesaid Crime or Crimes, that then he or they shall from thenceforth be disabled to sue, prosecute, plead or use any Action or Information in any Court of Law or Equity, or to be Guardian of any Child, or Executor or Administrator of any Person, or capable of any Legacy or Deed of Gift, or to bear any Office, Civil or Military, or Benefice Ecclesiastical for ever within this Realm, and shall also suffer Imprisonment for the Space of three Years, without Bail or Mainprize, from the Time of such Conviction.

Provided always, and be it enacted by the Authority aforesaid, That no person shall be prosecuted by virtue of this Act, for any Words spoken, unless the Information of such Words shall be given upon Oath before one or more Justice or Justices of the Peace, within four Days after such Words spoken, and the Prosecution of such Offence be within three months after such Information.

Provided also, and be it enacted by the Authority aforesaid, That any Person or Persons, convicted of all or any of the aforesaid Crime or Crimes, in Manner aforesaid, shall for the first offence (upon his, her or their Acknowledgement and Renunciation of such Offence or erroneous Opinions, in the same Court where such Person or Persons was or were convicted, as aforesaid, within the Space of four Months after his, her, or their Conviction) be discharged from all Penalties and Disabilities incurred by such Conviction; any thing in this Act contained to the contrary thereof in any wise notwithstanding.

Let us now examine the Province Laws of Massachusetts. An early act on the subject of blasphemy and heresy is as follows

SECT. 3. If any person within this jurisdiction, whether christian or pagan, shall wittingly and willingly presume to blaspheme the holy name of God, Father, Son or Holy Ghost, with direct, express, presumptuous, or high handed blasphemy, either by wilful or obstinate denying the true God, or his creation, or government of the world, or shall curse God in like manner, or reproach the holy religion of God, as if it were but a politic device, to keep ignorant men in awe; or shall utter any other kind of blasphemy of the like nature and degree, they shall be put to death, Levit. 21. 15, 16.

SECT. 19. Albeit faith be not wrought by the sword, but by the word; and therefore such pagan Indians as have submitted themselves to our government, though we would not neglect any due helps to bring them on to grace and to the means of it; yet we compel them not to the christian faith, nor to the profession of it) either by force of arms, or by penal laws: nevertheless, seeing the blaspheming of the true God cannot be excused by any ignorance or infirmity of human nature, the eternal power and Godhead being known by the light of nature, and the creation of the world; and common reason requireth every state and society of men to be more careful of preventing the dishonor and contempt of the most high God, (in whom we all consist) than of any mortal prince, or magistrates: it is therefore ordered, and decreed by this court for the honor of the eternal God, who only we worship, and serve, that no person within this jurisdiction, whether christian, or pagan, shall wittingly, and willingly presume to blaspheme his holy name, either by wilful, or obstinate denying the true God, or his creation, or government of the world, or shall curse God, or reproach the holy religion of God, as if it were but a public device to keep ignorant men in awe, nor shall utter any other eminent kind of blasphemy of the like nature, and degree. If any person, or persons whatsoever within our jurisdiction shall break this law, they shall be put to death.

Another ancient act against Heresy is as follows.

SECT. 1. ALTHOUGH no human power be lord over the faith and consciences of men, yet because such as bring in damnable heresies, tending to the subversion of the christian faith, and destruction of the souls of men, ought duly to be restrained from such notorious impieties:

It is therefore ordered and declared by the court; that if any christian within this jurisdiction, shall go about to subvert and destroy the christian faith and religion, by broaching and maintaining any damnable heresies; as denying the immortality of the soul, or resurrection of the body, or any sin to be repented of in the regenerate, or any evil done by the outward man to be accounted sin, or

denying that Christ gave himself a ransom for our sins, or shall affirm that we are not justified by his death and righteousness, but by the perfections of our own works, or shall deny the morality of the fourth commandment, or shall openly condemn or oppose the baptizing of infants, or shall purposely depart the congregation at the administration of that ordinance, or shall deny the ordinance of magistracy, or their lawful authority, to make war, or to punish the outward breaches of the first table, or shall endeavor to seduce others to any of the errors or heresies above mentioned; every such person continuing obstinate therein, after due means of conviction, shall be sentenced to banishment. [1646. 44.]

In 1697 just after the dark day of the persecutions and executions for witchcraft in Massachusetts, and before the darkness had been entirely dispelled, the following act, against blasphemy, was passed, from which the present statute, on which the indictment against the prisoner at the bar rests, is copied almost word for word. The provincial act is as follows:

AN ACT AGAINST ATHEISM AND BLASPHEMY.

BE it declared and enacted by the lieutenant governor, council and representatives, convened in general court or assembly, and it is enacted by the authority of the same, that if any person shall presume wilfully to blaspheme the holy name of God, Father, Son, or Holy Ghost, either by denying, cursing or reproaching the true God, his creation or government of the world, or by denying, cursing or reproaching the holy word of God, that is, the canonical Scriptures contained in the books of the Old and New Testament, namely, Genesis, Exodus, Leviticus, Numbers, Deuteronomy, Joshua, Judges, Ruth, Samuel, Kings, Kings, Chronicles, Chronicles, Ezra Nehemiah, Esther, Job, Psalms, Proverbs, Ecclesiastes, The Song of Solomon, Isaiah, Jeremiah, Lamentations, Ezekiel, Daniel, Hosea, Joel, Amos, Obadiah, Jonah, Micah, Nahum, Habakkuk, Zephaniah, Haggai, Zechariah, Malachi, Matthew, Mark, Luke John, Acts, Romans, Corinthians, Corinthians, Galatians, Ephesians, Philippians, Colossians, Thessalonians, Thessalonians, Timothy, Timothy, Titus, Philemon, Hebrews, James, Peter, Peter, John, John, John, Jude, Revelation, every one so offending shall be punished by imprisonment, not exceeding six months, and until they find sureties for the good behavior, by sitting in the pillory, by whipping, boring through the tongue with a red hot iron, or sitting upon the gallows with a rope about their neck, at the discretion of the court of assize, and general gaol delivery, before which the trial shall be, according to the circumstances, which may aggravate or alleviate the offence.

Provided, that no more than two of the forementioned punishments shall be inflicted for one and the same fact.

Gentlemen. You see these statutes are all run in one mould, and that they are intended to mould the faith of men, according to a particular creed, a belief in the Trinity. They all arm the believers in the Trinitarian faith, with the power to condemn what they may in the sincerity of their hearts believe to be heresy, and they enable the bigoted of that faith, to proscribe and persecute, all who dare to cherish and profess a different belief. This and every other penal statute respecting religion, is the offspring of the unholy union of Church and State, by which brother has been arrayed against brother, friend against friend, and nation against nation. By means of the fatal offspring of this union, the whole brood of penal laws, and penal prosecutions respecting religion, the different sects, as they have alternately obtained political predominance, have wielded the sword of the law to enforce their opinions. I have said that various statutes on the same subject, are to be compared together, in order to ascertain the true character and meaning of a law. I shall support this position by authority. Blackstone says :

If words happen to be still dubious, we may establish their meaning from the *context* ; with which it may be of singular use to compare a word or a sentence, whenever they are ambiguous, equivocal, or intricate. Thus the proeme or preamble, is often called in to help the construction of an act of parliament. Of the same nature and use is the comparison of a law with other laws, that are made by the same legislator, that have some affinity with the subject, or that expressly relate to the same point. Thus, when the law of England declares murder to be felony without benefit of clergy, we must resort to the same law of England to learn what the benefit of clergy is ; and when the common law censures simoniacal contracts, it affords great light to the subject to consider what the canon law has adjudged to be simony.

A similar doctrine has been established in the decisions of the Supreme Judicial Court of Massachusetts. The principle of those decisions is stated in Bigelow's Digest of the Massachusetts Reports, p. 740.

The general system of legislation upon the subject matter may be taken into view, in order to aid the construction of one statute relating to the same subject ; and it is proper to consider other statutes in *pari materia*, whether they be repealed or unrepealed.—*Terry & al. v. Foster & al.* i. 146. *Church v. Crocker*, iii. 21. *Holland v. Makepeace*, viii. 423. *The Inh. Somerset v. The Inh. Dighton*, xii. 383. *Holbrook v. Holbrook & al.* xviii. 254.

Gentlemen. Let a person be indicted upon this Statute, for reproaching the Holy Ghost, in which reproaching God, is one branch of offence, reproaching Jesus Christ is another, and reproaching the Holy Ghost, a third and distinct branch of offence. Can Unitarians who do not believe in the existence of any such distinct person, as the Holy Ghost, in whom the Trinitarians believe, render a verdict of guilty on this Statute? Can they render any verdict in any case, which shall sustain this Statute, which in their opinion, sets up, as the object of divine worship, what they believe in their consciences, to be an image of man's invention? If there be Unitarians on this Jury, they surely will not, by a verdict against the defendant, sanction this Trinitarian Statute, by which the intolerant among their religious opponents, may trample them in the dust.

Let me call your attention to a peculiarity in this Statute, a provision which is not to be found in the English or the Provincial statutes, and as I believe, in no law on earth, till the law was passed, on which the prisoner at the bar now stands indicted. I allude to the provision of the law, which declares it blasphemy to deny God's "*final judging of the world,*" and renders the offender liable to the punishments of the dungeon, the whipping post, the pillory and the gallows. This was a blow aimed at the Universalists, a denomination of Christians, before that time, too inconsiderable in numbers to be the object of persecution, but who about that time were rising into importance in this country. It was a blow intended to intimidate and crush the Universalists, and to overpower the arguments of their teachers, by the logic of the whipping post, the pillory and the gallows. If there be an Universalist on this Jury will he not rather perish, than sustain this statute, by his verdict? Will he not sooner see the Court, and the Jury, and the prisoner together sink into the dust, than sanction by his verdict on oath, a law by which himself, his wife and his children may be arraigned at this bar, and condemned and punished as blasphemers, for professing a religious belief, which is approved by the dictates of their own consciences? There is no doubt about the matter. It is a hit at the Universalists "a palpable hit," and with a weapon tinged with the deadly poison of religious persecution. The Universalists deny the final judging of the world, referred to in this Trinitarian Statute, and this provision of the Statute was manifestly inserted, to convert them, from their heresies, by a judging in this world, and a condemnation, to the whipping post, the pillory, and the gallows. The following is an account of the creed of the Universalists from Adams' View of Religions.

UNIVERSALISTS. The sentiment, which has acquired its professors this appellation, was embraced by Origen in the third century; and, in more modern times, by Chevalier Ramsay, Dr. Cheyne, Mr. Hartley, and others. The plan of universal salvation, as exhibited by a learned divine of the present day, who, in a late performance, entitled, "*The Salvation of all Men*," has made several additions to the sentiments of the above mentioned authors, is as follows:

That the scheme of revelation has the happiness of all mankind lying at bottom, as its great and ultimate end; that it gradually tends to this end; and will not fail of its accomplishment, when fully completed. Some, in consequence of its operation, as conducted by the Son of God, will be disposed and enabled, in this present state, to make such improvements in virtue, the only rational preparative for happiness, as that they shall enter upon the enjoyment of it, in the next state. Others who have proved incurable under the means, which have been used with them in this state, instead of being happy in the next, will be awfully miserable; not to continue so finally, but that they may be convinced of their folly, and recovered to a virtuous frame of mind—and this will be the effect of the future torments upon many; the consequence whereof will be their salvation, they being thus fitted for it. And there may be yet other states, before the scheme of God may be perfected, and mankind universally cured of their moral disorders, and in this way qualified for, and finally instated in, eternal happiness. But however many states some of the individuals of the human species may pass through, and of however long continuance they may be, the whole is intended to subserve the grand design of universal happiness, and will finally terminate in it; insomuch, that the Son of God, and Saviour of men, will not deliver up his trust into the hands of the Father, who committed it to him, till he has discharged his obligations in virtue of it; having finally fixed all men in heaven when God will be *all in all*.

A few of the arguments made use of, in defence of this system, are as follows.

Christ died not for a select number of men only, but for mankind *universally*, and without exception, or limitation.

For the sacred writers are singularly emphatical in expressing this truth. They speak not only of Christ's "*dying for us*," "*for our sins*," "*for sinners*," "*for the ungodly*," "*for the unjust*;" but affirm, in yet more extensive terms, that "*he died for the world*," for "*the whole world*." See 1st Thess. v. 10; 1st Cor. xv. 3; Rom. v. 6, 8; 1st Pet. iii. 18; John i. 29. iii. 16, 17; 1st John ii. 2; Heb. ii. 9; and a variety of other passages.

If Christ died for all, it is far more reasonable to believe, that the whole human kind, in consequence of his death, will finally be saved, than that the greatest part of them should perish. More honor is hereby reflected on God; greater virtue is attributed to

the blood of Christ shed on the cross; and instead of dying in vain, as to any real good, which will finally be the event, with respect to the greatest part of mankind, he will be made to die to the best and noblest purposes, even the eternal happiness of a whole world of intelligent and moral beings.

The Universalists are divided in sentiment on this subject, but all, who bear the name of Universalists, whether Restorationists or otherwise, deny the "final judging" and condemnation, which is believed in by so many other Christians, and they cherish the belief, of the final salvation of all men. Consequently every Universalist is liable to the penalties of blasphemy, by this cruel Statute, containing a persecuting provision, which never before disgraced a statute book.

There is another ground upon which this statute must be invalidated. The Statute declares it blasphemy, to contumeliously reproach the Holy Word of God, by exposing to contempt and ridicule the canonical scriptures "or any part of them." What version of the books of the Old and New Testament, was meant? Was it the Catholic version? That will not be pretended. The Legislature unquestionably intended the Protestant version of the Scriptures in use in the churches, schools and families of the people of the Commonwealth, else the law is void for uncertainty. It undoubtedly intended the translation of the Scriptures, made in the time of James the First, by the celebrated Abbot, and his learned companions, selected for that great work. Every part of that version, every verse, word and syllable is sustained as genuine, and placed beyond the reach of the inroads of biblical criticism, by the authors of this law. The Statute is void for violating the foundation principles on which human legislation depends. The Legislature has not the right to make a law, to prevent the improvement of the human mind, and to compel the people to adopt and maintain errors. Human Legislatures have not the right to cramp the human intellect, any more than to cripple the bodies of men. They have no right to stop the growth of knowledge and to set bounds to the range of enquiry after truth, especially in religion, when it is our duty diligently to seek after the truth. The Mahometan conqueror indeed said, when he burned the splendid library at Alexandria, that if the books contained merely the doctrines of the Koran, they were superfluous and useless, and need not be preserved; and if they contained different doctrines, from those of the Koran they were pernicious and ought to be destroyed. But the Legislature, of a people

professing to be free, has not the despotic power of the turbaned victor at the head of his fanatical and triumphant army. Our Legislature could not make a valid law, preventing investigation after truth, and the exposure of errors in relation to religion, and especially in relation to corruptions of the Scriptures;— Yet it has attempted to do this, in this very Statute. It has undertaken not only to define, what is the Holy Word of God; but to establish by an Act of the General Court, the authenticity and correctness of the version of the Scriptures in common use amongst us. It has attempted to prevent any efforts by biblical criticism, to correct any errors in our version of the books of the Old and New Testament, by the severe penalties of this Statute. No one is permitted to cast reproach upon “any part” or any verse of that version. ‘ Every verse word and syllable is sanctioned, and declared to be “canonical,” and the “Holy word of God.” Whatever errors there may be in the version of the Scriptures in common use, by reason of incorrect copying in the multiplication of copies of the Scriptures, before the invention of printing, or by reason of erroneous translations, or errors of the press, they must remain untouched by the sacreligious hand of learning. The whipping post, the pillory and the gallows, are denounced as the punishments of the presumptuous scholar, who shall discover and correct a single error, “in any part” of this version. It is blasphemy to cast reproach upon a single verse in these Books of Scripture. To say that a verse is an interpolation is of course casting reproach upon it, and exposing it to contempt and ridicule, for it brands that verse as spurious. But every verse and every part of these Books is protected by this Statute, from contempt, ridicule and reproach. This Statute therefore puts an end to the progress of the pious and learned labours of the divines and scholars, employed in biblical criticism, for every part of our version of the Old and New Testament is protected from criticism by those terrors to the evil doers the biblical critics, those bulwarks of learning, the whipping post, the pillory and the gallows. Our colleges must abandon their Professorships, for encouraging and promoting enquiries on the interesting and important subject of biblical criticism. The Legislature with a liberality and wisdom like that of the Moslem warrior, who burned the Alexandrian library, has settled all the vexed questions of biblical criticism, which have engaged the attention and called forth the energies of the finest minds in the world, and put an end to all further enquiries. Was there ever any thing bearing the form and superscription of a law, so absurd as this Statute, which con-

dems Unitarians indirectly, Universalists directly, and the most learned and pious scholars of the age, to the whipping post, the pillory and the gallows? As well might the Legislature have essayed to stop the course of our rivers, to arrest the rising tide, and confine the ocean, as to have attempted to chain the mind of man, check the progress of human learning, and stay the mighty flood of knowledge, constantly rising with accumulating force, and which will soon sweep into oblivion, all the superstitions, the errors and the oppressions of former ages, which have defiled the pure doctrine and disgraced the history of Christianity.

If the writers of the Scriptures were inspired, the copyists of the sacred books before printing was known were not inspired, and in the multiplication of the copies, errors have undoubtedly crept in to the Books, and tares have become mixed with the wheat. Since printing was discovered the compositors and the press men, in the printing offices, where the various editions of the Bibles have been published, have not been inspired, and there has been no security against errors of the press. Is it not admitted by the learned divines of almost every faith, that there are errors in the various versions of the Scriptures in use? Have there not always been important differences in the various versions which have been published of the Scriptures? Dr. Priestley as has been seen denies the authenticity of the chapters in the New Testament, which are relied on, to prove the doctrine of the miraculous conception, and says, that these chapters were not in some of the earliest copies of the Gospel, those of the Ebionite's who were the Unitarians of the Age of the Apostles. This subject in relation to an important passage in John is explained in a most able manner in the letters of the Reverend Henry Ware, jr. now one of the Government of Harvard College, addressed to the Reverend Mr. McLeod, in 1823, on account of his use of a disputed verse in the common version of the Scriptures, as a text for a sermon. Here is an extract from Mr. Ware's letters.

It is not my object to make any general defence of the faith against which you have been preaching; much less to complain at your taking an opportunity to warn your people against what you esteem a dangerous error. Your duty to your conscience and to them required it of you; and I would be the last to advocate any abridgement of the liberty of speech in the pulpit. It is not because you have defended Trinitarianism that I ask to be heard; that, you had an unquestionable right to do; but because you de-

fended it upon ground which it appears to me, you had no right to take. When I went up to worship in your church on the evening of the last Sabbath in April, nothing could exceed my astonishment at hearing you announce as your text, that celebrated verse—*There are three that bear record in Heaven, the Father, the Word, and the Holy Ghost, and these three are one.* (1 John, v. 7.) I did not readily recover from my surprise. The opinion which is universally expressed by the learned respecting this verse, came fresh to my recollection; and it was with difficulty I could persuade myself, that I had heard it quoted as a part of the Christian Scriptures in that sacred place. It was true, I had been told, that some ministers had lately quoted it as authentic; but I had taken it for granted they must be uninformed and ignorant men; for I had never yet seen reason to doubt the assertion of an able theologian, "that no man of tolerable learning or fairness, at the present day, would think of using it." But now I found it adduced by one to whom I could attribute neither ignorance nor unfairness; and what, then, should relieve my wonder?

My surprise at your use of this text has not ceased. The learned of the present day, throughout the religious world, have agreed, after a long and laborious examination, in pronouncing it no part of the original Scriptures. All who are most competent to judge, Trinitarians as well as Unitarians, with one voice, and with scarcely any reserve, declare it to be an unauthorized addition to the Epistle of John; so that it is, with one consent, thrown out of the Trinitarian controversy. I may well, therefore, be astonished, as I am ignorant of the reasons upon which you have made up your mind, that you should argue from it as genuine.

I do not forget that you told us, that it had been your object in a preceding discourse, "to establish its genuineness as a part of Scripture." I could not suspect you, indeed, of omitting, as some have done, so important a consideration; and I cannot but regret, that I had not the opportunity of hearing it discussed. For I acknowledge I am at a loss to conjecture whence you could have gathered sufficient proof to outweigh all those circumstances of evidence, which have for so long a time put the question at rest. It would be wrong, however, to deal in mere assertion on this subject. I beg leave, therefore, to lay before you the language of a few respectable writers—all Trinitarians—whose decisions on this subject, of which they were well able to judge have been thought conclusive.

Let me first ask your attention to the *Electric Review*, the religious character of which is unsuspiciously orthodox. The passage has been frequently quoted, but the very honorable and decided stand which it takes in behalf of the purity of the sacred text, renders it worthy of perpetual remembrance.

"Upon this," says the writer, "we need not spend many words.

It is found in no Greek manuscript, ancient or modern, except one, to which we shall presently advert; in no ancient Version, being interpolated only in the later transcripts of the Vulgate. Not one of the Greek fathers recognises it, though many of them collect every species and shadow of argument, down to the most allegorical and shockingly ridiculous, in favor of the doctrine of the Trinity, though they often cite the words immediately contiguous both before and after; and though, with immense labor and art, they extract from the next words the very sense which this passage has in following times been adduced to furnish. Of the *Latin* fathers, not one has quoted it, till Eucherius, of Lyons, in the middle of the fifth century; and in his works *there is much reason to believe that it has been interpolated.*"

After this summary of the evidence, the writer proceeds in the following striking and decided tone. "Under these circumstances, we are UNSPEAKABLY ASHAMED that any modern divines should have fought, *pedibus et unguibus*, for the retention of a passage so INDISPUTABLY SPURIOUS. We could adduce half a dozen, or half a score passages of ample length, supported by better authority than this, but which are rejected in every printed edition and translation."

The learned Griesbach, another believer in the Trinity, whose ability to judge in questions of this nature will be universally acknowledged, makes use of language equally strong with that just quoted. "If it were worth while," he says, "I would undertake to defend *six hundred of the most futile and universally rejected readings* by testimonies and arguments equally numerous and valid, nay, in general, more numerous and valid than those which the advocates of this passage adduce; nor would the defenders of a genuine text have so many and weighty arguments to oppose to such an absurd attempt, as have been produced against the defenders of this verse. I wish those would seriously consider this, who may in future undertake to defend this text."

Bishop Lowth, another learned Trinitarian, is equally decided. "We have some wranglers in theology," he says, "sworn to follow their master, who are prepared to defend any thing, however absurd, should there be occasion. But I believe there is no one among us, in the least degree conversant with sacred criticism, and having the use of his understanding, who would be willing to contend for the genuineness of the verse, 1 John, v. 7."

Michaelis, in his most learned and valuable Introduction to the New Testament, says, "It is very extraordinary that any man should *think* of opposing the testimony" in favor of this verse to the testimony against it. And again he says, "One would suppose that no critic, especially if a Protestant, would hesitate a moment to condemn as spurious, a passage," supported by such feeble evidence as this. To each of these sentences he adds a summary of the evidence, which it is unnecessary to quote here.

Dr. Middleton, in his elaborate work on the Greek article, tells us, that this passage is "now pretty generally abandoned as spurious;" and that if any one will study the controversy, "the probable result will be, that he will close the examination with a *firm belief that the passage is spurious*." He adds afterward—"in the rejection of the controverted passage, learned and good men are now for the most part agreed; and I contemplate with admiration and delight, the gigantic exertions of intellect which have established this acquiescence."

Rosenmuller observes, "It is the opinion of most critics at the present day, that these words are spurious."

Mr. Wardlaw, a late zealous and eloquent defender of the doctrine of the Trinity, is no less positive. "Certainly," he says, "this text should have been entitled to hold the first place, had its genuineness not been disputed, as that of many texts has been, on slight grounds. I freely acknowledge, however, that the evidence of the spuriousness of this celebrated passage, even if it were much less conclusive, than, in my mind, it appears to be, would be quite sufficient to prevent me from resting upon it any part of the weight of this argument."

To the same purpose the Bishop of Lincoln, in his *Elements of Christian Theology*, says, "I must own, that after an attentive consideration of the controversy relative to that passage, *I am convinced that it is spurious*."

Prof. Stuart undoubtedly holds the same opinion respecting this verse; for in adducing the texts in favor of the doctrine of the Trinity, he omits all mention of this—whereas if he thought it genuine, he must have given it a conspicuous place. He probably alludes to it, with others, when he says, he shall "select only those texts, the language of which appears to be genuine, and above the condemnation of textual criticism."

In this place may be added the fact, that the Great Reformer, LUTHER, uniformly rejected his verse from this Translation of the New Testament. He did not admit it to a place in the edition which was publishing at the time of his death; and "he concluded his preface to that edition," says Charles Butler, "with what may be termed his *dying request*, that *upon no account his translation should be altered in the slightest instance*;" which of course, implies his firm persuasion, that this verse does not belong to the Bible.

To these names, some of them amongst the most honored in the church, might be added many more equally well known; it is enough to mention these eminent biblical critics, Simon, and Wetstein; Benson, Grotius, and Semler, (who, says Michaelis, "not only confuted all the arguments which had been used in favor of this verse, but wrote the most important work which we have on this subject,") Sir Isaac Newton, Bishop Herbert Marsh, Archbishop Newcome, and the distinguished Methodist, Dr. Adam Clarke; and,

finally, that illustrious scholar, Porson, whose letters, by which the controversy concerning the verse was brought to a final conclusion, "are an eternal monument of his erudition, critical sagacity, and wit."

To the extracts already made, others might be added, if I were in a situation to have access to the necessary books. I have not made them under the idea that you are unacquainted with them; but simply, that it might be seen how strong and unqualified is the conviction produced upon the minds of the most competent judges, by the evidence against this verse.

Is not this verse a part of the version in common use, and a part of the canonical Scriptures according to this Statute? Does not the Reverend Mr. Ware reproach this verse and also reproach a brother Clergyman, for presuming to use it, as a text for a sermon? He declares it to be an interpolation in the New Testament. And he vouches Luther, Charles Butler, the eminent Catholic lawyers of England, and one of the most distinguished among the scholars of that country, and the most celebrated divines of the Church of England, and the eloquent and learned Professor Stuart, to sustain him, in his attack upon this verse, and his attempt to expose it to the reproach of spuriousness. Suppose a passage in an ordinary testament or will of a citizen to be decried as an interpolation. Would not this be branding it with the reproach of spuriousness and falsehood? Would it not be casting contumelious reproach upon the passage, and exposing it to contempt? The Reverend Rodolphus Dickinson, Rector of St. Paul's Church in Pendleton, South Carolina, has lately published in this City, a new work entitled "A New and Corrected Version of the New Testament." In page 497 is the following note respecting this disputed verse.

It is likely this verse is not genuine. It is wanting in every Greek MS of this Epistle written *before* the invention of printing; one excepted, the *Codex Montfortii*, in Trinity College, Dublin; the others which omit this verse amount to *one hundred and twelve*. It is wanting in both the Syriac, all the Arabic, Ethiopic, the Coptic, Sahidic, Armenian, Slavonian, &c, in a word, in all the ancient *Versions* but the Vulgate; and even of this Version many of the most ancient and correct MSS have it not. It is wanting also, in all the ancient *Greek Fathers*; and in most even of the Latin. Many of the *Greek Fathers* quote both verse 6, and verse 8, applying them to the Trinity and Divinity of Christ, and the Holy Spirit; and indeed endeavor to prove the doctrine of the Trinity from verse 6, and verse 8, without referring to any such verse as the 7th, which, had it existed, would have been a more positive

proof, and one that could not have been overlooked. The *Latin Fathers* do not quote it, even where it would have greatly strengthened their arguments; and where, had it existed, it might have been most naturally expected. The *Latin writers* who do refer to the three heavenly Witnesses vary greatly in their quotations; the more *ancient* placing the *eighth verse* before the *seventh*; and very many omitting, after the earthly witnesses, the clause *these three are one*, and in *Christ Jesus*—others use different terms. It is wanting in the *first edition* of Erasmus, A. D. 1516; in his *second edition* 1519; but he added it in the *third* from the *Codex Montfortii*. It is wanting in the editions of *Aldus*, *Gerbelius*, *Cephalus*, &c. It is wanting in the *German translation* of LUTHER, and in *all the editions* of it published *during his lifetime*. It is inserted in our early *English translations*, but with marks of *doubtfulness*. In short, it stands on no authority sufficient to authenticate any part of revelation, professing to have come from God. *Clarke*.

By the best inquiry that I have been able to make, this verse is wanting in the manuscripts of all languages but the Latin.

Sir Isaac Newton.

I am little disposed to seek support for an awful truth from materials of suspected soundness;—and more disposed to avoid entering into the discussion, since the particular verse in question, so far as the main purpose and connexion of the apostle's argument are concerned, is illustrative and ornamental only. *Heber.*

I must own, that after an attentive consideration of the controversy relative to that passage, I am convinced that it is spurious.

Pretyman.

It appears rather below the Christian cause to be so zealous in defending a text, which in all ages has been thought so very doubtful.

William Gilpin.

Professor Griesbach, who does not appear to be an enemy to the doctrine, and who has carefully and critically examined all the evidences and arguments on both sides, has given up the text as utterly defenceless; and thinks, that to plead for its authenticity is dangerous. 'For if,' says he, 'a few dubious, suspicious, and modern evidences, with such weak arguments as are usually adduced, are sufficient to demonstrate the authenticity of a *reading*, then there remains no longer any criterion by which the *spurious* may be distinguished from the *genuine*; and consequently, the whole text of the New Testament is unascertained and dubious.' *Clarke*.

Clarke, Griesbach, and other critics, in the style of apology, accompany their rejection of the text by an avowal of their faith in the doctrine, which it is supposed to sustain. What connection has this with the subject? A translator is not thus on confession. It is degrading. He ought to disdain it. Facts are his elements, not theories; results of truth his objects, not the tendencies upon theological polemics.—The preceding passage is incontestably

an interpolation. Its authenticity, as a part of the original text, has long since, in many instances, been completely invalidated; and that indiscretion, which still persists in vindicating the integrity of the clause, would seem prepared, that the foundations of the great deep of sacred criticism should be broken up, and the flood-gates of indefinite glosses thrown open, to create universal confusion, and to contaminate and overwhelm the unadulterated word of God.

TRANS.

In an edition of the Scriptures, a copy of which is now on the table before me, printed in 1580, I believe within a century after the discovery of printing in Europe, and which is in the Latin language, this passage is omitted. I again enquire, has the Legislature a right to punish biblical criticism, as the offence of blasphemy, and to overthrow the arguments, and destroy the researches of learned men on this subject by the whipping post, the pillory and the gallows? If you honestly believe this verse to be an interpolation have you not a right to mark it in your Bibles for the instruction of your children? and will you by sustaining this Statute by your verdict renounce this right? In many editions of the Scriptures this passage is printed in italics in a different manner from the other unsuspected passages, in order to suggest to the reader, that the genuineness of the verse is questioned. Have you not a right to mark it as spurious in your Bibles? But you cannot do so, without casting upon it reproach and contempt, and exposing yourselves, according to this Statute, if you sustain its validity, to the pillory and the gallows. Gentlemen, you see, that if this Statute be not invalidated by your verdict, we shall at once be carried back into those ages when the world was enveloped in the worse than Egyptian darkness, the darkness of superstitious ignorance.

Gentlemen. We will leave the Statute of Massachusetts against Blasphemy, and examine the Common Law doctrine on the subject of libel, which is supposed to bear on this case. It was told you in the opening speech of the Government's counsel, that if the defendant cannot be convicted upon this Statute, he may be condemned at Common Law for a blasphemous libel against the Christian Religion. Various decisions of the English Judges were referred to on the subject of publications, against the Established Religion, and the Established Church of England, which in the BRITISH Courts, have been holden to be libels and punishable as common law offences. An attempt is now made to transplant this exotic doctrine of the English Courts, the rank growth of a Monarchy, to this sacred soil of

freedom. I shall have something to say hereafter in relation to this law Christianity of England; but at present I ask your attention to another part of the case.

By the common law, as it is declared in the English law books, publications are considered libels, which are offensive to morals, and hostile to the Established Religion and Established Church, which in England the Judges call Christianity, although it was that Christianity, which our Puritan ancestors abhorred and fled from, even to the wilderness the home of the heathen savage. Let us first examine the doctrine in relation to immoral publications, without reference to religion. The case of the prisoner at the bar, does not fall within that class of libels, for that class embraces merely lewd and lascivious publications, like some notorious works, filled with grossly indecent pictures and descriptions, calculated, to sully and corrupt the purity of youth, and to subvert the foundations of virtue. An English work, one of the most infamous of these vile productions, was republished in the County of Worcester in this Commonwealth. The publisher was indicted and convicted, and the case is reported in the Seventeenth volume of the Massachusetts Reports. It was rightly held that the publisher of such an atrocious book was answerable to the law, and he was condemned and punished. Every person who commits such a deadly sin against morality, as an attempt to debauch the morals of youth, and destroy in the innocent breasts of the young, the principles of virtue, which all of every religious faith regard, is an enemy to the human race, and properly punishable as a dangerous violation of the public peace. In such a case there is an offence committed against good morals, and a fatal blow is struck at the well being of society. Morals alone, not disputes in religion or questions of propriety of style, are involved. But an attack upon a particular religious belief, however coarse and improper, is not necessarily an attack upon morality, because, those who oppose each other most furiously and indecently on account of their differences in religion all generally agree perfectly on every point of morals. The respective disputants may practice and illustrate the virtues of morality in their conduct, although they may violate good manners, offend good taste, and be betrayed into most gross indecencies of style in their religious controversies. Enlightened men every where agree in the general maxims of morality. But they do not agree any where in religious tenets. Neither can they agree what opinions, writings, or arguments in religion, promote or injure the cause of morality. A Christian declares that a religious book written by an East

Indian philosopher or Priest, will sap the foundations of morality, by subverting the true religion. The Bramia and the Pundit on the other hand assert, that that book teaches the true faith, and thereby establishes the most firm stay and support to morality. The Christian condemns the religious works of the Mahometan Doctors, because the rewards there promised to the faithful Musselman, are inconsistent with his ideas of morality. The Mahometan teachers, on the other hand, believe and maintain, that the hopes cherished, and the rewards promised in the books of their religion, furnish incentives to virtue in this life, and produce the brightest examples of good conduct among men. A Calvinist says, that the doctrines of the religious books of the Universalists, take away all restraint upon evil doing, and destroy the guard of conscience, and therefore are dangerous to morality. The Universalist replies that the books of this religion make good men in this life, and fit all men for happiness hereafter. The Unitarian charges upon the Calvinist, that his religious works on predestination, teach fatalism, and are dangerous to morality, by inducing men to believe, that all their bad actions are not things which they could have avoided, and that they are the results of a power and influence, other than their own wills. Thus you see in respect to these points, that there is no fixed standard, no settled religious belief, which is considered as exclusively identified with morality. But all of every religious belief, and every unbelief, hold that morality is the universal cement of society, and that whoever attacks morality, offends against society. But the law cannot proceed a jot or tittle beyond that point of mere morality, for the moment it undertakes to punish an attack upon religion, as an attack upon morality, then the question arises, and must be settled, what particular faith is religion; for none but the true faith can be religion, and we are tost on a sea of uncertainty without star or compass to guide our course.

The case of the prisoner at the bar does not fall within the class of libels against morality. The indelicacy of the first article, the only composition to which the charge of obscenity is applied, is rather an offence against good taste and propriety, than against morality. That however is an article, for which the defendant is neither morally, nor legally accountable. Yet gross and offensive as it may be, it does not resemble those publications, which are offences at common law, as libellous publications against morality. Mere indecency of style, like indelicacy in conversation, is not indictable. The character of lewdness must attach to the publication, to render it the

legitimate subject of a prosecution for a libel at Common Law, as an attack upon morality. This first article disgusts, but it cannot allure. Writings of merely an indecent character, like gross and offensive language or manners, may be despised, but are not the subject of prosecutions. Such writings are violations of the canons of criticism, but not of the laws of the land. They are affairs for the critics, not the constables; for the lash of public opinion, not the scourge of the public executioner; for public contempt, not the pillory and the gallows.

Another branch of the law of libel is respecting the abuse of persons. The branch does not reach the present case. Such abuse is punishable, but abusive attacks upon opinions are not punishable by law. It is upon this ground, that the unrestrained freedom of literary criticism is permitted by law, and sanctioned by decisions in courts of justice. An author's person and private character shall not be attacked, but his opinions, arguments and style, may be assailed with all the artillery of argument, and all the arrows of ridicule. The law shields the character of a person, but does not shield the opinions of a person. This article complained of contains no abuse of any private character. Why does the law hold an offensive attack in writing, a stain upon the character of an individual, a public offence? It is for the sake of preserving the peace of society, because the blood of the injured party may be stirred by the insult, and he may disturb the public peace in seeking to avenge the wrong. This is the principle, which is the root of this branch of the law of libel. That great man, Professor Stuart, in his capital letter on Religious Liberty, displays this view of the subject in the following passage, with all the accuracy of a sound and experienced lawyer.

We not only believe that all men should be left free to form their religious opinions, without any civil penalties or disabilities, but we maintain most fully, that *when the religious sentiments of any one are formed, he has a right to propagate them, to defend them, and to support them, by his efforts, his pen, his property, or his influence.*

In all this we understand of course, that in so doing he does not slander or abuse his neighbor, nor deny him any civil or social right as a member of the community, nor hinder him in the lawful exercise of it. Of the former of these faults the civil law justly may take cognizance. Against the latter, the law of love and of doing as we would be done by protests.

We believe most fully, that men have a right to propagate their religious sentiments, if they confine themselves to argument and persuasion, and do not appeal to abuse, which is a crime in the eye

of the civil law, it being manifestly against the peace of the community. We are well aware, indeed, of the mischiefs which may result from a free right to propagate religious or rather *irreligious* sentiments of any kind. We know too well, that incalculable evil the publication of such books as the *Age of Reason*, the works of Boulanger, of Voltaire, and of La Mettrie have occasioned. We shudder at it as one of the most dreadful of evils, inasmuch as it takes hold on *eternity* and not merely on time. But dreadful as it is, we regard as a still greater evil, the power of civil government, or of any ecclesiastical tribunal, to suppress the publication of books at its option. To-day it may choose, as Frederic the Great did, and the French Directory after him, to circulate widely Voltaire, and D'Alembert, and Rousseau; or to-morrow it may spread wide the poison of some heresy lurking under a Christian name; while at the same time, it inhibits all antidotes to these tremendous evils. The liberty of the press, *the unreserved liberty of it*, is in our view fundamental to religious liberty. If the press be, as it doubtless sometimes is, a most terrible instrument of doing evil; it is also one of the most efficient of all instruments in doing good. We would forever leave it open and free to do good; and if the liberty to do evil must come along with this (and we do not see how it is possible to prevent it,) why then the friends of truth must trust to argument, to reason, to conscience, and to God, for triumph over the powers of darkness. And this they may do, without peril to the cause in which they are engaged.

Here we perceive that Professor Stuart makes the proper legal distinction. He imposes the only proper restraints upon the right of maintaining our own opinions, the restrictions of not slandering our neighbor, or denying him his civil and social rights. His character, his civil and social rights are not to be assailed, but there is no exemption claimed for his opinions. They must be defended by the same arms with which they are attacked, by intellectual weapons, not the sword of the government. In all those cases public opinions, not public tribunals of justice, holds the corrective power, and the only corrective power. The evil of abusive compositions cures itself. Those writings which are gross and offensive, produce no sort of effect on the public mind, and vulgarity always excites a prejudice against the cause in which it is displayed. Coarse attacks upon sentiments, do not stand upon the ground of coarse attacks upon individuals. In assailing a religious belief, who is reproached? Whose character is attacked? Who has the right to consider it a personal offence to himself? Who is to be provoked to a breach of the public peace? The offence of an attack upon religion, is an offence against Heaven, and to Heaven

alone belongs the prerogative to avenge. It cannot be assumed that an attack, upon opinions which are regarded, is an attack upon individuals cherishing those opinions; for the moment that ground shall be assumed, either there can be no opinions, however erroneous, examined and exposed, lest personal offence may be given, or else the peace of society will be disturbed, and the world filled with quarrels and bloodshed. There is, there must be a privilege in relation to attacks made upon particular opinions, as well religious as political, which cannot be extended to attacks upon the character of individuals. All freedom of opinions will be destroyed unless opinions may be freely and boldly examined. If they are correct, they will stand the test. If they are incorrect, the sooner they are exploded, by the power of reason, the better it is for the cause of truth, and human improvement.

It is contended that an attack upon Christianity is necessarily an attack upon morality. Then it must be that they are inseparable, or one and the same thing. This cannot be correct, although the Christian Gospel in its simplicity comprises a most pure and sublime system of morals. It is not philosophically correct, that Christianity and morality are the same, or that they are inseparable. If so, there never could have been and there never can be any morality, without Christianity. Have we not heard from the pulpits of the most distinguished divines, that morality was quite a distinct thing from Christianity, and that morality was filthy rags? Are the pure vestments of Christianity filthy rags? I have just been told by an eminent clergyman of this city who now is within the reach of my voice, that some very pious Christians, whose zeal I should suppose a little outstrips their knowledge, hold that morality is exceedingly dangerous, as it induces the worker of righteousness to place too great a reliance upon this support, and therefore brings his soul into greater peril of utter perdition. The world has been told, by Dr. Horsely a proud Lord in lawn, of the House of Lords of the Imperial Parliament of Great Britain "that Unitarianism being heresy even the moral good of the Unitarians is sin." According to the doctrine of such Christians, morality and Christianity, are things as far removed from each other, as the earth from the Heavens.

If morality and Christianity be one and the same thing, or things inseparable, how were societies formed, governments established, and nations raised to power and glory before Jesus Christ was born and the glad tidings of his Gospel proclaimed? Upon what principles was society regulated, during the thous-

ands of years in which this Globe rolled through the fields of space, in its appointed circuit around the glorious luminary—the centre of our system, before the revelation of Christianity was made? Was there no morality in the days of Homer's heroes, among whom were some of the most glorious characters ever described in any work of fact or imagination? Was there no morality in the heroic ages, or were the Sages and the Chiefs of the Iliad, the Odyssey, the Æneid—ideal models of human excellence, the fanciful creations of the immortal Bards of Greece and Rome? Was there no morality in the days of Homer, Pythagoras, Solon, Socrates, Plato, Aristides, Cicero and Virgil? Was there no morality in the vast, populous and civilized empire of China in the time of Confucius? Was there no morality in the Great Kingdom of Egypt, where before even the commandments were proclaimed, mid the thunders of Mount Sinai, Benjamin was accused of an offence against morality, because of the cup of Joseph, which was found in his sack? Was there no morality amongst the immense nations of the American continent, stretching almost from Pole to Pole, till the lofty and daring genius of Columbus impelled him to the discovery of the New World? Was there no morality among the civilized Mexicans, till Cortez subverted the empire of Montezuma, and stretched Gautimozin on the bed of living coals? Was there no morality in the rich and extended empire of the gentle and polished Peruvians, till the Spaniards shed the blood of the Incas, robbed the palaces, and plundered the temples? Was there no morality in the land of Rolla—the chieftain immortalized by the genius of Kotzebue and Sheridan, till Pizarro came to deluge that land in blood, and proclaim the Gospel of the Prince of Peace, by the voice of the trumpet, and the mouth of the cannon? Has there been no morality from the earliest time in those seats of innocence and contemplation,—the dwellings of the Bramins? Is there no morality among the great nations more numerous than Christians, who follow the banner of the Crescent and whose cry, there is but one God and Mahomet is his Prophet, resounds from Eastern Europe to the extremities of Asia and Africa. Is there now no morality among five sixths of mankind, who have not yet received the blessings of the religion of Jesus Christ? The supposition that morality and Christianity are inseparable, that morality cannot exist without Christianity, is contradicted by history. While it is an affront to the understandings of men, it casts a reproach upon the goodness of God, who while he has sown the seeds of morality throughout the earth, has permitted the knowledge of Christianity, and the be-

lief in Christian doctrines, to be as yet confined to a small portion of the great human family.

Illustrations from history abundantly show that morality can exist without Christianity. Is there not a beautiful instance in ancient history of the forgiveness of an enemy, and of magnanimity to a fallen foe, which, the Head of the Church of England in our time—the Prince Regent of the British empire, had not the lofty virtue to imitate? I allude to the different treatment of the Themistocles of ancient times and the modern Themistocles, by the Heathen and the Christian Monarchs. Did not this Persian king display more true virtue, more of the genuine spirit of the Gospel of Jesus Christ than the Christian Sovereign? Themistocles had repulsed the fleets and armies of Persia, and raised the Athenian Republic to that pinnacle of glory, which Great Britain reached when the vanquished Napoleon came a suppliant to a victorious foe. The statesman of Athens experienced the ingratitude of the Republic, and was compelled to seek at the Persian court a retreat from the persecution of his countrymen. He threw himself at the feet of the Monarch of a nation whose fleets he had captured, and whose immense armies he had overthrown, and asked for protection and hospitality. Was it denied him? No, Gentlemen, all enmity was forgotten, when they beheld the great man of the age in the depth of distress. He was received with kindness, and entertained with honor. The revenue of cities was assigned for his support, and the illustrious and unfortunate Athenian was made the chief among the friends of the Great King, and the object of the admiration of his brilliant Court. Compare the conduct of the Heathen Prince with the treatment by the Christian Sovereign of a greater man than even Themistocles? The Emperor Napoleon was received under circumstances which ought to have bound the consciences of a Christian people, and the honor of a Christian Government. He said to the British Prince, “I come like Themistocles to throw myself upon the hospitality of the British people.” But he was not received by this Christian Government, as was Themistocles by the Persians. He was denied the honorable asylum which he sought. The laws of nations, the dictates of humanity, and the precepts of the Gospel were violated, and he was borne away to a pestilent rock in the midst of the ocean, which, after six years of his cruel exile and agony had elapsed, was rendered famous as the tomb of the greatest character in the “Pantheon of History.” Does not this comparison of the virtue of the most powerful nation of antiquity, and the most powerful Christian nation

of modern times demonstrate that morality can exist without Christianity, and that Christianity has existed at least on one memorable occasion without morality.

But you are told that our ancestors brought with them the Common Law of England, and that Christianity is a part of the Common Law. There are in the books some sayings of the English Judges that Christianity is a part of the Common Law, and one of the most distinguished among those, who have held this doctrine, is the celebrated Sir Matthew Hale. But this Judge is one of those Judges, who have condemned persons for witchcraft, and the ermine of his judicial robes was stained with the blood of the innocent victims of superstition. Sir Matthew Hale would be as good authority to sustain a prosecution for witchcraft, as to sustain the present prosecution against the defendant, by establishing that Christianity is a part of the Common Law of England. Indeed Sir Matthew Hale was the great authority in Massachusetts to sustain the prosecutions for witchcraft which disgraced our early history. What is the Common Law of England? It is called the customs of immemorial antiquity handed down by tradition, among the English people. Now during the period of the existence of the Common Law, England has had all kinds of religion? Has the Common Law embraced all those kinds of religion? Are they parts of the Common Law? Yet one must be as well as another, or else none of those various kinds of religion are parts of the system. The Common Law is older than Christianity. In the earliest times of British history, the British religion was the dark superstitions of the Druids, the Priests of Mona's isle, who worshipped in the deepest recesses of the woods, and offered up the horrid sacrifice of human victims to the objects of their idolatry. Is this religion a part of the Common Law? When the Romans came they brought with them the Gods of Rome, and Cæsar, who found London a great place, and as Shakspeare tells us in Richard the Third, built the Tower, bore with him the God of War and the other Gods of his Country. Did the religion of ancient Rome become a part of the Common Law of England? When the Saxons invaded Britain, they brought with them their Gods of War, Woden and Thor? Did the Saxon religion become a part of the Common Law? Yet two days in the week in England and the United States, Wednesday and Thursday bear the names of their Deities, and have perpetuated the memory of these "fabled Gods" even to the present day. It was not till the reign of Claudius, the successor of Tiberius in whose reign Jesus Christ was crucified, that Christianity was

introduced into England, by means of the conversion of a noble lady, by a missionary from Rome. Up to that period surely, Christianity was no part of the Common Law of England. The religion of England has been often changed; and the dates of the changes, are well known, and some of them are recent affairs. But the Common Law is of immemorial antiquity, and as old as the native Britons, say the English law books, and therefore these various kinds of religion, introduced within legal memory, and can be no part of this system of immemorial antiquity. England after the introduction of Christianity embraced the Catholic religion. Was this religion a part of the Common Law? Then she adopted the religion of the Protestants. Did this become a part of the Common Law? Next she resumed the Catholic religion. Did this become once more a part of the Common Law? Next she resumed the Protestant religion. Did this too become a part of the Common Law? Then Presbyterianism became predominant. Did this become a part of the Common Law? Next the Puritan or Independent religion, became ascendant. Did this become a part of the Common Law? Afterwards, Episcopacy and the Church of England were resumed. Did this become again a part of the Common Law? Lord Bacon said the English laws and language became enriched by various foreign acquisitions, but this philosophical lawyer never said that the English law was enriched by the incorporation of various contradictory religions. The ecclesiastical history of England destroys the pretension, that Christianity is a part of the English Common Law, for if the great stream of the Common Law, has been receiving all the various kinds of religion among the English, Druidism, Roman Mythology, Saxon Idolatry, Catholicism, Protestantism, Episcopacy, Presbyterianism and Puritanism are all parts of the Common Law.

Gentlemen. What will be your astonishment when you learn, that all the pretensions of the English Judges that Christianity is a part of the Common Law, are founded on a gross blunder or a gross fraud. But this is the fact. The illustrious Jefferson has ably, fully and conclusively exposed the imposition. He has invalidated all the leading cases, relied upon by the Government in this case, to convict the defendant, by establishing the position that Christianity is a part of the Common Law. Jefferson thus demolishes the fraud or ignorance of the English Judges in relation to this matter in his celebrated letter to Major Cartwright, the Whig Patriarch of England.

I was glad to find in your book a formal contradiction, at length, of the judiciary usurpation of legislative powers; for such the judges have usurped in their repeated decisions, that Christianity is a part of the common law. The proof of the contrary, which you have adduced, is incontrovertible; to wit, that the common law existed while the Anglo-Saxons were yet Pagans, at a time when they had never yet heard the name of Christ pronounced, or knew that such a character had ever existed. But it may amuse you to show when, and by what means, they stole this law in upon us. In a case of *quare impedit* in the Year book, 34. H. 6. folio 38. (anno 1458,) a question was made, how far the ecclesiastical law was to be respected in a common law court. And Prisot, Chief Justice, gives his opinion in these words. 'A tiel leis qu'ils de saint église ont en *ancien scripture*, convient à nous à donner crédençe; car ceo common ley sur quels tous manners leis sont fondés. Et auxy, Sir, nous sumus obligés de conustre lour ley de saint église; et semblablement ils sont obligés de conustre nostre ley. Et, Sir, si poit apperer or à nous que l'évesque ad fait come un ordinary fera en tiel cas, adong nous devons ceo adjudger bon, ou auterment nemy;' &c. See S. C. Fitzh. abr. Qu. imp. 89. Bro. Abr. Qu. imp. 12. Finch in his first book, c. 3. is the first afterwards who quotes this case, and mistakes it thus. 'To such laws of the church as have warrant in *holy scripture*, our law giveth credence.' And cites Prisot; mistranslating '*ancien scripture*,' into '*holy scripture*.' Whereas Prisot palpably says, 'to such laws as those of holy church have in *ancient writing*, it is proper for us to give credence;' to wit, to their *ancient written laws*. This was in 1613, a century and a half after the dictum of Prisot. Wingate, in 1658, erects this false translation into a maxim of the common law, copying the words of Finch, but citing Prisot. Wing. Max. 3. and Sheppard, title, 'Religion,' in 1675, copies the same mis-translation, quoting the Y. B. Finch and Wingate. Hale expresses it in these words; 'Christianity is parcel of the laws of England.' 1 Vent. 293, 3 Keb. 607. But he quotes no authority. By these echoings and re-echoings from one to another, it had become so established in 1728, that in the case of the King *vs.* Woolston, 2 Stra. 834, the court would not suffer it to be debated, whether to write against Christianity was punishable in the temporal court at common law. Wood, therefore, 409, ventures still to vary the phrase and say, that all blasphemy and profaneness are offences by the common law; and cites 2 Stra. Then Blackstone, in 1763, IV. 59, repeats the words of Hale, that 'Christianity is part of the laws of England,' citing Ventris and Strange. And finally, Lord Mansfield, with a little qualification, in Evans's case, in 1767, says, that, 'the essential principles of revealed religion are part of the common law.' Thus ingulphing Bible, Testament, and all into the common law, without citing any authority. And thus

we find this chain of authorities hanging link by link, one upon another, all ultimately on one and the same book, and that a mistranslation of the words '*ancien scripture*,' used by Prisot. Fich quotes Prisot; Wingate does the same. Sheppard quotes Prisot, Finch, and Wingate. Hale cites nobody. The court, in Woolston's case, cite Hale. Wood cites Woolston's case. Blackstone quotes Woolston's case and Hale. And Lord Mansfield, like Hale, ventures it on his own authority. Here I might defy the best read lawyer to produce another scrip of authority for this judiciary forgery, and I might go on further to show, how some of the Anglo-Saxon priests interpolated into the text of Alfred's laws, the 20th, 21st, 22nd, and 23rd chapters of Exodus, and the 15th of the Acts of the Apostles, from the 23rd to the 29th verses. But this would lead my pen and your patience too far. What a conspiracy this, between Church and State! Sing Tantarara, rogues all, rogues all. Sing Tantarara, rogues all!

Here you perceive a gross blunder or fraud in translating the words "ancien scripture," which mean merely ancient writings or old records, and in the case in which the expression was used, meant merely, church canons, parish records, and church books; has given rise to a string of cases in the English Courts, now imported into this free country, to put down the liberty of speech, the freedom of the press, and the rights of conscience. Here in an ancient case involving Church interests, the Court say, in ecclesiastical cases we give credit to the ancient writings of the Church, that is to the old records, parish records, tithe books, and things of that nature, as our Courts now do to bye laws of banks, and customs of merchants in mercantile concerns. This word "ancien," is perverted and mistranslated "holy." Upon this wretched hook hang all the English decisions, to prove that Christianity is a part of the Common Law. Upon this foundation, completely subverted by Jefferson, rests the Babel superstructure of the law Christianity of the English Courts. By such an imposture as this, have the English Courts armed themselves with the power to muzzle speech and chain the press in matters of religion, and thus they have sustained the cause of Church and State, by which our ancestors were persecuted, and by which the liberties of the English people are ground up between the millstones of secular and ecclesiastical power. Hence all this doctrine of the English Courts, that attacks upon the established church, are libels on Christianity, and offences at common law. All these authorities, as has been shown, depend upon a mistranslation of a single word, which has been quoted from one case to another. Yet

we are told even here, in this land of toleration, that such sayings are law to bind the freemen of the United States. We are now called upon to respect doctrines manufactured by a set of Judges, who, if you lived within their power, would authorize a proctor to take a tenth part of your income under the tithe system to pamper the luxury of the clergy of the Established Religion. Mr. Jefferson exposed the fallacy of these pretences, and he defies all the lawyers of England to contradict him, and none to my knowledge have dared to enter the lists with this champion of civil and religious liberty. Yet you are now called upon by the Government, to import and adopt this infamous fraud or blunder from the English Courts in order to convict the defendant of blasphemy. All the Judges and Clergy that sustain the corrupt government of England, cannot disprove this fraud, which Jefferson has exposed. It may be thought by some, that the authority of Jefferson is not to be received, because he has been too often falsely alleged in this State to be an UNBELIEVER in Christianity. That is a calumny upon his reputation. He died amid the prayers of his friends and neighbors, and the blessings of his countrymen. He was a firm believer in the doctrines taught by Jesus Christ, as he understood them, and as he had lived, so he died, in the hope of a glorious immortality. He was as sincere a Christian as ever lived in the profession of the Unitarian faith, and he always acted upon the advice he gave his young friend, to "adore God," and "love his neighbor as well as himself and his country better than himself."

[The Judge here said that the character of Mr. Jefferson was not on trial, and it was unnecessary to go into it.]

Mr. Dunlap. I know that, but this is a peculiar case, and if any attempt to shake the authority of Jefferson's opinions in the minds of the Jury, is to be made here, where he has been so vilely slandered, I claim the right to remove that obstacle out of the way, and to defend to the extent of my ability his fame, so dear to a vast majority of his countrymen.

You perceive by the close and lawyer-like criticism of Jefferson, that all the cases in the Books were examined by him, except the later case depending on the authority of the old cases, which sustains the doctrine that an attack upon the Christian religion is a Common Law offence.

The law Christianity of England is found only in the Statutes made to protect England from the belief of Protestantism at one time, and from the belief of Popery at another time. From the earliest times down to the present, as any party has

acquired the power, it has passed Statutes to sustain their own doctrines and suppress all others. Will it be pretended that we have adopted these Statutes as a part of our Common Law? If we have adopted the law Christianity of England, then we have adopted her established church, her tithes, her bishops and sinecures; for the same argument which proves we have adopted a part, must also prove, we have adopted the whole. We have adopted their Ecclesiastical Courts, and the Courts of the Knights Templars and Hospitallers. To give you an idea of what sort of Courts these Ecclesiastical Courts were, which form a part of the law Christianity of England, I will read a note of a case in Lord Coke's Fourth Institute, which gives an account of a clergyman's suit against an independent farmer because he would not entertain the parson and his men, when they went through his yard, or suffer them to trespass on his grounds.

Also in the reign of queen Eliz. William Taylor clerk, parson of Springfield in Essex did implead William Massy gent. before the high commissioners for giving unreverent speeches to the minister, &c. for carrying his corn on holy days, for not suffering the parson and parishioners to come thorough his yard in rogation week in the perambulation, and not giving them a repast as usually he had done.

The law Christianity of England has grown not from the Common Law but from their bloody Statutes and tyrannical Ecclesiastical Courts—the creatures of Statutes; and so far from our ancestors bringing it with them, I thought it was what they quitted their country to escape from; I thought it was the scourge of the penal Statutes relating to religion and the Spiritual Courts of England waving over their heads, which drove the Pilgrims from the tombs of their fathers, and the birth places of themselves, and their children, first to Holland and afterwards to this country. I thought it was the law Christianity of England, against which they shook off the dust of their feet, as they parted from their native land, and bade it an eternal farewell. I thought they came here, to plant in the snows of the wilderness the standard of civil and religious liberty, far beyond the reach of the law Christianity of the English Government, and the tyrannical ministers of their cruelty the English Judges those honest translators, of the words “ancien scripture,” into Holy Scripture, and the authors of the doctrine that Christianity is a part of the Common Law of England.

If we have adopted the absurdities of the Common Law, then we have adopted Sir Matthew Hale's doctrine of witchcraft, together with his doctrine that Christianity is part and parcel of the Common Law. We have adopted witchcraft which he was so blinded by bigotry and superstition, as to believe in, a crime of which no human being is capable of being guilty, and which is now abolished in England by Act of Parliament. As men made the crime, so they have abolished it. We must also have adopted the Common Law test by ordeal, by which the accused were thrown into the water, and compelled to walk barefoot on red-hot ploughshares. In the water trial if they sunk and were drowned, then they were innocent, but if they could swim, they were pronounced guilty. So if they walked over the red-hot iron unharmed they were declared innocent, but otherwise were pronounced guilty. This was the Common Law of England. Another of the absurdities of the Common Law, and which we must have adopted, if the doctrine contended for in this trial be correct, is that after a person charged with murder has been acquitted by a Jury the next relative or heir of the murdered person, may have his appeal against the accused, and put him on trial again. But the accused, in that case, might demand the trial by battle, to decide the matter in single combat between him and the appellant. This absurd law was in full force until 1819, when it was abolished by the British Parliament. In 1818 a person charged with murder, and acquitted on his trial, was afterwards put to the appeal by the nearest kin of the deceased, who demanded the trial by battle. The question came up, and the Judges, who say Christianity is a part of the barbarous English Common Law, solemnly decided that the Common Law was in force, and the party had a right to demand the combat. Mr. Rush, a distinguished citizen of this country, was at that time our Minister to England, and in his interesting memoranda, he states that he heard this question deliberately argued in the King's Bench, and the decision made that the parties must engage in single combat. The appellant being a small man, and the accused an athletic man, the former was obliged to withdraw the appeal, but had he also insisted in his Common Law right, the Court would have been compelled to appoint umpires, and prepare the lists for a regular duel. Yet at the same time, by the laws of the land duelling was a criminal offence, and if death ensued, the surviving party was chargeable with murder. Such are some of the beautiful consistencies of the Common Law which the Government are now urg-

ing upon you, as the authority under which you are to convict the defendant, and put him in the pillory, or on the gallows, for maintaining his opinions relating to religion.

Gentlemen. I have endeavored thus far in the course of this argument to shew, that the publications, which are the subject of this indictment, do not come within the Statute against Blasphemy, that the Statute is invalid, and that these publications do not constitute an offence at Common Law. We now advance, to the Constitutional ground, and an examination of the Constitutions of the United States and State of Massachusetts.

It was said that the Constitution of the United States, had adopted the Common Law, and the seventh article of the amendments of the Constitution relative to the trial by jury, and suits at common Law, as well as a decision in the Circuit Court of the United States, for the First Circuit, relative to the exclusion of a witness as incompetent on account of religious disbelief were relied on, to sustain the position.

There was a doubt from the first settlement of the colonies on the question whether the Common Law offences, were cognisable, in the Colonial Courts. An important case occurred at an early period in Connecticut, which is stated in the history of that Colony and is referred to by the learned Tucker, the American Commentator on Blackstone. Judge Tucker says a slave was indicted for inflicting a brutal, fatal, and degrading injury on his master's son.

The lawyers quoted the English Statute against maiming; the court were of opinion that Statute did not reach the colony, because it had not been passed in the general assembly. At length, however, the court had recourse to the vote of the first settlers at New-Haven, viz. that the bible should be their law, till they could make others more suitable to their circumstances. The court were of opinion that vote was in full force, as it had not been revoked; and thereupon tried the negro, by the Jewish law, "eye for eye, tooth for tooth;" and he suffered accordingly.

There is considerable doubt, how far the Common Law is a guide in the Courts of the United States in civil suits. But in respect to criminal causes, there is no doubt. There is no offence at Common Law in the jurisprudence of the United States. The people will not suffer American citizens to be punished in this country, by a foreign code of laws, the laws of a Government of which we have declared ourselves independent. The penal laws of the United States are all of home

origin, and of domestic fabric. There is no such thing known as an offence at Common Law, in the jurisprudence of the United States. The people of the United States, long since determined by an irreversible decree that English Common Law in relation to offences, should have no force in the Courts of our confederated Republic, and the opinions of those, who hold a different doctrine, are condemned as errors. This matter has been settled by the Supreme Court of the United States, which in an opinion delivered by a venerable and learned Judge of that Court, banished from the Tribunals of the nation, all Common Law offences. There are no witchcraft, no heresy, no blasphemy causes, and no law Christianity prosecutions in the Courts of the United States. The following is an extract from the opinion referred to, which may be found in the case of the United States, vs. Hudson and Goodwin, reported in the seventh volume of Cranch's Reports.

The Court, having taken time to consider, the following opinion was delivered (on the last day of the term, all the judges being present) by JOHNSON, J,

The only question which this case presents is, whether the Circuit Courts of the United States can exercise a common law jurisdiction in criminal cases. We state it thus broadly because a decision on a case of libel will apply to every case in which jurisdiction is not vested in those Courts by statute.

Although this question is brought up now for the first time to be decided by this court, we consider it as having been long since settled in public opinion. In no other case for many years has this jurisdiction been asserted; and the general acquiescence of legal men shews the prevalence of opinion in favor of the negative of the proposition.

Thus you see that the Supreme Court of the United States, in accordance with the most decided expression of the opinion of the people on this subject, repudiates all claim of jurisdiction over Common Law offences.

What provisions on the subject of religion are contained in the Constitution of the United States? There is but one on this subject, and that is the glorious provision in the First Article of the Amendments, which is as follows.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Here in connexion, with the security of the liberty of the speech, and the freedom of the press, is the inalienable security of the rights of conscience. The Constitution of the United States so far from adopting the Christian Religion, has restrained Congress from establishing the Christian Religion, and prohibiting any other religion; and the principle of universal toleration, is protected by the Ægis of the Constitution. Away then, with the suggestion, that the United States have adopted the Common Law, and with it Christianity as a part of that system. It is a political heresy, in opposition to the sentiments of the people, and contrary to the true Constitutional faith, for the Constitution of the United States, has never adopted the Common Law of England relative to offences, and so far from adopting the law Christianity of England, Congress is deprived of the power to adopt it by the noble provision, which forbids that the National Legislature should establish any religion, or prohibit any religion.

The Constitution and laws of the United States, so far from sustaining this Statute, against Blasphemy actually destroy its validity. By the Constitution and laws of the United States, persons of every religious faith, may be admitted as citizens. The oppressed of every political sentiment, and the persecuted of every religious faith, may here find a refuge, in this land of civil and religious liberty. Here they may repose under their own vines and fig trees, and there are none to molest or make them afraid. This Statute of Blasphemy is opposed by the Constitution and the laws of Congress on the subject of naturalization, and therefore is void, for no Jew, no Gentile, none, but a Christian, and a believer in the established faith which this Statute establishes can live in safety under this Statute. None but a Christian, and a Trinitarian Christian, can enjoy his religion under this law. The Statute is therefore now attacked here on the ground that it conflicts, with the naturalization laws of the United States, and restrains the rights and privileges which these laws secure to naturalized citizens of every religious profession or sentiment. This point, that the Statute conflicts with the naturalization laws of the United States, is now argued before this Tribunal. If a verdict shall be rendered here against the defendant, it will be argued in the Supreme Court of the State, to which the cause will be appealed. Should the defendant there fail, he will transfer the cause by a writ of error to the Supreme Court of the United States, when this point will be argued at the Capital, in the presence of the nation. If the deep excitement now prevailing this crowded

assembly, shall be extended, like the expanding circle on the waters, made by the stone thrown into the lake, till it shall affect the whole people of this vast Republic, to the farthest extent of our empire, the blame must rest on the authors of this ill omened prosecution. Gentlemen : I entreat you for the sake of the reputation of the State, the country and the age in which we live, suffer not this cause, to proceed further, put an extinguisher upon it, by your verdict in favor of the defendant.

Let us now examine the glorious Constitution of the renowned Commonwealth of Massachusetts. It is said, that it has adopted Christianity, and reliance is placed on various passages of the instrument, to maintain this ground. Let us examine these passages. In the first place, we are referred to the religious Test Oath or subscription in the Constitution, which the Governor, Lieut. Governor, Counsellors, Senators and Representatives were formerly required to take, and which was as follows.

"I, A. B. do declare that I believe the Christian Religion, and have a full persuasion of its truth."

The misfortune of the argument resting on this Test Oath and subscription, is, that it proves the opposite of what it was intended to establish. If the insertion of this Test Oath and subscription in the Constitution, incorporated the Christian Religion, then striking that Test Oath and subscription out of this instrument, must have stricken out Christianity, and by the doings of the Convention of 1820, ratified by acclamation, by the people of this Commonwealth, this Test Oath and subscription was struck out of the Constitution. The following oath is now taken by public officers.

I, A. B., do solemnly swear, that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the Constitution thereof, So help me God."

Another clause relied upon to prove that Christianity has been incorporated into the Constitution, is this provision.

And every denomination of Christians, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the law ; and no subordination of any one sect or denomination to another shall ever be established by law.

But the same misfortune attends the argument founded on that passage, as that respecting the religious Test Oath, it has also been struck out of the Constitution. There has been a

late amendment of the Constitution. This amendment was at length carried before the people after a long and persevering struggle on the part of the House of Representatives of successive Legislatures, against the opposition of the Senate. The people adopted it, almost unanimously. The vote of the people on the adoption of this amendment, which abolished the tithe system, or the system of a compulsive support of the clerical profession in this Commonwealth, has not been yet officially promulgated; but it is well known. The result has been proclaimed in the thunders of the ballot-box, and some thirty thousand votes of the people have ratified the amendment, with a meagre opposition, of only some two or three thousand votes against it. In this amendment, the words are not as formerly in the Constitution, "Every denomination of Christians;" but the words are, "Every denomination." The word "Christians" was struck out. The Jew, the Mahometan, the Pundit, the Bramin, the Chinese, the Deist, are now all equally under the protection of our Republican Constitution, and equal laws, with the Christian. The argument therefore weighs in the scale of the defendant, not that of the Government, for if the insertion of the words "Christians" in the Constitution, adopted the Christian Religion, then, Christianity disappears from the Constitution, when that word "Christians" is made to vanish by the sovereign will of the people.

Gentlemen. There is a clause in the Constitution, which proves that we are indeed a Christian people, and which has mingled the mild spirit of the Christian Religion, with the republican spirit of our political institutions. It is not so much those provisions of the Constitution which have been read to you, by the Counsel for the Government, as that which has not been read to you. It is that provision, which emancipates the people from the shackles of tyranny in religion which mankind had worn for ages, that provision which abolished forever all penal laws and penal prosecutions on the subject of religion, and declared in the most solemn manner, by the voice of the Sovereign people, that no subject shall be hurt, molested or restrained in his person, liberty or estate for his religious profession or sentiments. This is universal toleration, the vital principle of Christianity. Does not the Gospel of Jesus Christ proclaim "On earth peace, good will towards men?" Jesus Christ said, "And I say, if any man hear my words and believe not, I judge him not, for I came not to judge the world but to save the world." If the Founder of our Religion would not judge, nor condemn even the unbeliever, who heard his voice, will the

Court and Jury adventure to assume a jurisdiction, which was declined as alien to his religion by the Author of Christianity? Again says the Teacher, "My kingdom is not of this world," and he utters the warning admonition, which all his history has verified, to the framers of penal laws, and the authors of penal prosecutions on the subject of religion, "Judge not that ye be not judged, for with what judgment ye judge, ye shall be judged: and with what measure ye mete, it shall be measured unto you again." The framers of our Constitution therefore acted as good Christians, as well as good Republicans, when they proclaimed the great truths of religious liberty, in the declaration of the Bill of Rights, that no subject shall be hurt, molested or restrained, in his person, liberty or estate, for his religious profession or sentiments.

Even in the case of the false one, among the disciples, who betrayed his Master with a perfidious kiss, no sentence, no punishment was awarded against him, it was merely declared that it had been good for that man if he had not been born. Neither earthly vengeance; nor the curses of Heaven were invoked upon his head. He was left wholly to the terrible accusation of his own conscience, and he executed judgment on himself. Did not Peter deny Christ, and according to this Trinitarian Statute, deny God? He denied his Master with imprecations. He had been the companion of Jesus Christ, and an eye and ear witness of his "signs and wonders." But Peter was not condemned. The weakness of man, "the infirmity of human nature" which by one of our early Massachusetts laws against Blasphemy, is declared to be no excuse, was considered in extenuation of the conduct of the offending disciple. Peter was but a man, and the strength of his character was subdued by the formidable power of persecution. He saw his Master in the power of the Roman Soldiery and the corrupt and bigoted Priests among the Jews, stimulating their fanatical countrymen, to the destruction of the Author of the Gospel Reformation. In that hour to try his soul, he faltered and denied his Master. So far from being condemned, he was forgiven. Even the flock was committed to his charge, and it was declared that upon Peter as upon a rock should the Edifice of the Christian Church be built.

I again enquire, will this Court or any enlightened Christian Tribunal, disregard the pure precepts, and the perfect example of universal toleration, taught and displayed by Jesus Christ? Will they who cannot know the heart of man, undertake to punish the prisoner at the bar, for declaring that he does not

believe in Christ, when even the disciple was forgiven, who, with imprecations denied Christ, to whom he had just before pledged the most solemn assurance of his inviolable fidelity?

Let us admit that our Constitution does adopt the Christian Religion. It is adopted in the incorporation of the principle of universal toleration, the great principle of Christianity. It is adopted in the declaration in our Bill of Rights, that no subject shall be hurt, molested or restrained in his person, liberty, and estate, for his religious profession or sentiments.

Let us now examine that portion of the Bill of Rights, which bears upon this subject, and which was intended by the framers of this Constitution as a political ordinance, to fence out the evils, by which other countries, and our own in former times, had been inundated in consequence of penal laws, and penal prosecutions on the subject of religion.

The following is the Second Article of the Bill of Rights.

It is the right, as well as the duty, of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping GOD in the manner and season most agreeable to the dictates of his own conscience: *or for his religious profession or sentiments*; provided he doth not disturb the public peace, or obstruct others in their religious worship.

There are three propositions in this Article. The first declares that it is the right and duty of men to worship the Supreme Being. The second contains a declaration that no subject shall be hurt, molested or restrained in his person, liberty or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience. The third contains a declaration, that no subject shall be hurt, molested or restrained in his person, liberty, or estate, for his religious profession or sentiments. The only restrictions imposed upon the full and perfect enjoyment of these rights, are, that the public peace shall not be disturbed, nor others obstructed in their religious worship. Is not this a correct statement of the contents of this Article? How shall this article be construed? It is not to be looked at and peered over, by the narrow optics of a technical drudge and mere hack in the trade of the law, hunting after syllables in a penal statute. It should be viewed with the eye of philosophy, and in the clear, broad light, in which Statesmen of expanded minds, are accustomed to examine subjects of the greatest interest to mankind. This is a great

Ordinance of a glorious People, then raising the noble edifice of freedom, while they were consummating the most magnificent event on the scroll of history, achieving a Revolution, which trampled in the dust the chains of political and superstitious bondage, in which mankind had been bound for countless ages. They were rearing the Temple of Freedom, and one of the main pillars is, the prohibition of all penal laws and penal prosecutions on the subject of religion. This was manifestly the object of the people and therefore this provision of the Bill of Rights should receive the most liberal, and enlarged construction, that which philosophy and philanthropy approve, and which best promotes the just and enlightened objects of the framers of the Constitution.

This sacred instrument is not to be tampered with, nor are the objects of the people to be defeated, by the sharp quibbles of legal construction, annulling its glorious provisions. It was a maxim of Jefferson that "error of opinion may be safely tolerated, when reason is left free to combat it." This was the sentiment of a Christian philosopher, and a Republican statesman, and it was the sentiment of the wise framers of the Constitution of this Commonwealth. No narrow, illiberal astute construction of this article of the Bill of Rights, will be tolerated by the country or the age in which we live. The words are plain, and the language is explicit which proclaims the principle of universal toleration. If there were a doubt, the most liberal construction should be adopted, for that is in accordance, with philosophy, philanthropy, the genius of our institutions, and the character of our people. What did the people, who sent the Delegates, in the Convention desire? Did they not expect a Charter of freedom, at their hands? They were not disappointed, and from the ruins of Monarchy in Massachusetts a Republican Government rose to the admiration of mankind to sustain in politics and religion, the undeniable rights of man. What did the authors of the Constitution intend to secure in this provision? It was freedom, perfect freedom in the maintenance of opinions in religion, unrestrained by any other than these restrictions, that the public peace is not to be disturbed, nor the freedom of the religious worship of others, obstructed.

What is the meaning of the words "religious profession or sentiments." Do they not mean profession or sentiments in or respecting religion? Can any intelligent and honest mind deny, that this is the fair, true and only meaning of these words? The Bill of Rights then protects the subject, from being hurt, molested or restrained in his person, liberty or estate for his

religious profession or sentiments ; or his sentiments in or respecting religion, whatever they may be.

Are we to be told that this Article only protects the rights of those, holding what in the opinion of the Court and Jury "are religious profession or sentiments" and that the defendant's "profession or sentiments" are not religious, but irreligious? Would not this be a despicable quibble, discreditable to the mind and heart which should approve it? It would destroy the whole object of the provision in the Bill of Rights, and in an instant annihilate the bulwark of liberty, which our fathers intended should stand for ages, a monument of their wisdom and virtue, and the protection of the rights of their children to the latest generations. Such a miserable construction would annul the Bill of Rights, for it would leave it in the power of the Legislature, to punish by penal laws, and in the power of the Courts to harass by penal prosecutions, all who might maintain any profession or sentiments in or respecting religion, which the Legislature and the Courts might choose to consider not religious, but irreligious profession or sentiments. Under such a petty-fogging construction of that great Charter of our liberties, won as was the English Magna Charta by the sword, the people of Massachusetts would be no better protected against persecution on account of religion, than the people of Spain are under the Inquisition, which Bonaparte destroyed, but which by the power of Great Britain and the Holy alliance was revived. Such a construction would leave it in the power of the Legislature and the Courts, to say what were, or were not religious profession or sentiments, and thus let in the flood of mischiefs, which the Bill of Rights was made to keep out. An Orthodox Legislature, might consider the Unitarian or Universalist as not of "religious profession or sentiments," and an Unitarian or Universalist Legislature, might consider the Orthodox, as not of "religious profession or sentiments." You see therefore that such a construction would be a mere quibble, and if sustained, all the barriers of toleration, all the safeguards of the Constitution, which is a law to the Legislature, and the Courts would be at once swept away and destroyed. None would be protected but those, whose "religious profession or sentiments," might be in accordance with those of the Legislatures and Courts.

If none are to enjoy protection from being hurt, molested or restrained in person, liberty or estate, except those, whom the Legislature and the Courts may consider to be of "religious profession or sentiments," the provision in the Bill of Rights is

altogether superfluous, for those who are of "religious profession or sentiments" according to the opinion of the Legislature and the Courts, never can be in danger of being hurt, molested or restrained, in person, liberty or estate for their "religious profession or sentiments," and therefore need no protection. They need no shield against religious persecution, for they are already guarded by the shield of the Government. They do not punish, even in Spain, those who hold to the "religious profession or sentiments" of the Government and people. They only burnt in the Inquisition the heretics, those who were not of the "religious profession or sentiments," which the Government approved. It is not for those who hold the "religious profession or sentiments" of the Government and the people, that the broad shield of universal toleration is provided in the Bill of Rights, for they are invulnerable. It is for those, who hold a profession and sentiments which are not considered by the Government and people as religious, for those alone are in danger of persecution. This Bill of Rights is a shield for the weak, not a weapon of persecution for the hand of the strong. It is intended for those who alone need protection—those who profess unpopular sentiments respecting religion.

The Constitution intended to protect all of every belief and unbelief respecting religion. The framers of the Constitution did not intend to have any Inquisition here. They did not intend that their Legislature and Courts should have any power to interfere, in what they have no right to interfere, in matters of belief or unbelief respecting religion. They intended to have no heresy laws, and no heresy prosecutions, and therefore abolished and prohibited all penal laws and penal prosecutions on the subject of religion in this Commonwealth. Who shall say what are religious profession or sentiments. Among Catholics, the Protestant religion has been holden to be heresy. The same condemnation, upon the Roman Catholic religion, is pronounced by Protestants. Do not the Calvinists and Unitarians mutually accuse each other of not maintaining religious sentiments? The moment the toleration principle, which we have been examining shall be quibbled away, the most glorious provision of the Bill of Rights will vanish, and in every penal prosecution respecting religion, the question must be settled, what constitutes religious profession or sentiments. One Court and Jury will set up one standard of faith, and another Court and Jury a different standard,—thus our Constitution will be subverted, and the rights of conscience forever prostrated.

Religious sentiments; All men cherish religious sentiments, clear or confused, according to their various degrees of understanding, habits of reflection and means of knowledge; and the framers of the Constitution intended to protect from penal laws and prosecutions those of every varying religious profession, and all of every sort of sentiments respecting religion. They intended to protect all of every belief and of every unbelief relating to religion.

Gentlemen. There is an established rule, of construction of all written laws from the construction of a Statute, on the most unimportant subject up to the Ordinance of the people, the Constitution, which may assist our enquiries. It is thus stated with admirable clearness by one of our most distinguished American juridical sages, in the ninth volume of his Digest of American Law. p. 578.

With regard to the different parts of a statute, there is one general rule of construction; that is, the construction of each and every part must be made on a full view of the whole statute; and every part must have force and effect, if possible; for the meaning of every part is found in its connexions with the other parts; and it cannot be believed the legislature intended any part of the statute should be without a meaning, or without force or effect. These rules are not peculiar to statutes, but held in regard to wills, deeds, and all instruments where the question is, What did the maker mean. Each ought to be so construed, if it can be, as to prevent any clause, sentence, or word, being superfluous, void, or insignificant; for this obvious reason, no maker of either can be supposed to mean that any part, clause, or word, shall be insignificant, superfluous, or void.

You see that every part of a Statute shall have effect, and each part shall if possible, be so construed, as to give to the whole an effect, and to prevent the rendering any phrase or word ineffectual, superfluous and void. Such is the rule of construction, to be applied to the most inconsiderable Statute, passed in the most hasty manner by the Legislature.

Such is the respect paid to the authority of the most unimportant laws, that it shall not be supposed, that the Legislature has used words, without a meaning, and therefore a meaning shall if possible be given, to all the words of the law. With far greater force does this rule of construction apply to the Constitution, a Supreme law of the sovereign people to the Legislature and the Judiciary. Was not the Convention, which framed the Constitution of our Commonwealth, one of the most august

assemblies which ever was convened under the sun? Were not their doings among the most important events recorded on the page of history. It was the first or one of the first assemblies of the people by their representatives in the world, for the purpose of framing the social compact of government, and establishing a free Constitution. Till the American Constitutions were formed, the world never saw a Constitution, of Government,—a Supreme Ordinance of the people, as a curb to the Legislature and a bridle to the Judiciary. The British people have no Constitution and never had any. They boast of their Magna Charta, Bill of Rights, and Habeas Corpus, and other laws for the protection of the subject against the power of the Government. But these bulwarks of freedom may all be swept away, by a single statute, for it is a maxim among them, that their Parliament is omnipotent. A combination of the King, Lords Temporal, Lords Spiritual, and the Commons can make any law however tyrannical, and repeal the wisest and most humane law in the Statute book. The coalition against the people of Church and State, of the King with the Bishops interested to secure their titles and tithes, with the Nobles interested to maintain their usurpation in violation of the equal rights of man, and with a corrupt House of Commons interested to sustain by venal votes all sorts of corruption, is unrestrained by any written Constitution of Government. The only check is public sentiment, which is now speeding the cause of reform, by causing the Lords Temporal and Spiritual to tremble in their seats, and the Monarch to shake on his throne, at the hand writing on the wall, the manifestation of the will of the people, in favor of a complete and radical reformation. That reform will drive the Bishops, the inflexible enemies of freedom, from the House of Lords, and finally destroy the unholy union of Church and State, which places religious teachers in the post of legislators, by which the land of our ancestors has been so long and so cruelly afflicted. Our revolutionary fathers determined to have no legislative or judicial usurpations in this State. They intended that there should be in Massachusetts no political omnipotence, except the sovereign power of the people. They therefore established this Constitution of Government, and every word of the Ordinance of the people is to have its full effect, for every word of the Bill of Rights, is the deliberate expression of the will of the people. Apply this principle of construction that every word is to have its effect, to the clause in the second article of the Bill of Rights. The words of this clause are as follows.

And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping GOD in the manner and season most agreeable to the dictates of his own conscience; *or for his religious profession or sentiments*; provided he doth not disturb the public peace, or obstruct others in their religious worship.

In the first place all who worship God are protected in the most ample manner. Does the clause stop there? No, the Bill of Rights proceeds further. After that come these words "or for his religious profession or sentiments." This extends the Constitutional safeguard, even to those, if there be such on the face of the earth, who do not worship God. These latter words are separated from the former phrase in the clause, by the disjunctive conjunction "or" which is used to distinguish a clear separation from or an "opposition of meaning" to the class of persons before described. If this be not so, these words "or for his religious profession or sentiments" are without any meaning, and altogether superfluous. All who worship God according to the dictates of their consciences, are first protected. Then to remove all doubt, and to guard against vile quibbling in order to destroy the glorious provision of the Constitution, even those, who do not worship God, if there can be any such, are also protected. These words or "for his religious profession or sentiments," must have the effect to throw the Constitutional shield of toleration over all sorts of unbelief, or else they are a dead letter, and must be considered, to have been used, by the framers of the Constitution, without a meaning. This is not to be supposed, unless one of the best established rules of construing laws, be violated in a case where it should be most regarded. No one can believe or dare declare, that the words "or for his religious profession or sentiments" have no meaning, and are ineffectual, superfluous and void. If they have a meaning they extend the principle of toleration, as it should be extended, in every Constitution of a people professing to be free, to the protection against penal laws and penal prosecutions of all, whatever may be their profession or sentiments respecting religion.

In the course of this trial, it has been intimated, and it will probably be again enforced, that there is a nice and delicate distinction to be made, in considering the privileges secured by this Second Article of the Bill of Rights, between the right to enjoy opinions, and the right to maintain and attempt to propagate them. It may be contended, that the Constitution permits a man to believe what he pleases in relation to religion, but does not protect a party, in promulgating and maintaining his

sentiments. Such a distinction is more nice than wise. It refines away the Constitution, and renders it a mere cobweb, not a substantial bulwark of the liberties of the people. What sort of toleration would this be? What sort of protection would such a construction of the Bill of Rights secure? Such a construction renders the Constitution a mere mockery, for a man does not need the Constitution to protect him in the enjoyment of his secret opinions. In the countries of the Inquisition, even in its dungeons, the enjoyment of secret opinions, cannot be restrained, and if such a construction can be sustained, we are no better secured in this matter, in Massachusetts, than are the subjects of the most absolute government on earth. A person needs protection for his avowed, not his concealed opinions. And avowed opinions or sentiments in or respecting religion, are those alone which need protection, and which are protected by the Constitution. The Constitution will not admit of an absurdity like this, that the maintenance of one's profession or sentiments in religion is not within the protecting clause. It positively declares, that no subject shall be hurt, molested or restrained in his person, liberty, or estate, on account of his religious profession or sentiments, that is, on account of the religious sentiments which he professes and avows. The Constitution sanctions no such absurdity. Its positive declaration is, that no person shall be hurt, molested or restrained, for his opinions or sentiments on religious matters? Can he be hurt, molested, or restrained, for opinions which are kept secret? Is that the meaning of the Constitution? Surely not. A person is not to be hurt, molested, or restrained for promulgating his sentiments relating to religion in any way he pleases, provided only, "he doth not disturb the public peace, or obstruct others in their religious worship." I do not defend the propriety and expediency of the maintenance of the sentiments the defendant may hold in religion, for I stand here merely to maintain his strict, legal and Constitutional rights, and thus to defend him against this prosecution. But, by the Constitution, he is not to be hurt, molested, or restrained, in person, liberty, or estate, for attempting to promulgate his sentiments respecting religion. If he have a right to hold those opinions, he has a right to make them known.

"To speak his thoughts is every freeman's right."

On this point let me read to you, the orthodox doctrine of orthodox Christians on the subject of religious freedom. It is the true doctrine, the doctrine of liberty of conscience guaranteed by the Constitution. The opinions of the Orthodox,

on this subject, is thus proclaimed by their great Champion in this State, Professor Stuart.

* * * "We mean that the Mahometan even, and the Jew, and the Deist, as well as the Christian, should have the liberty of worshipping in his own way among us, so long as they demean themselves peaceably, and do not invade the rights of others. We know of *no exception* to participation in *civil and social* rights, and *the right of worshipping in our own way*, or of even *not worshipping in any way*, under a government that is free in the sense that we would have it; and all this without any abridgement of the rights of citizens, without any civil disabilities." * * *

"We not only believe that all men should be left free to form their religious opinions, without any civil penalties or disabilities, but we maintain most fully, that *when the religious sentiments of any one are formed, he has a right to propagate them, to defend them, and to support them, by his efforts, his pen, his property, or his influence.*

In all this we understand of course, that in so doing he does not slander or abuse his neighbor, nor deny him any civil or social right as a member of the community, nor hinder him in the lawful exercise of it. Of the former of these faults the civil law justly may take cognizance. Against the latter, the law of love and of doing as we would be done by, protests.

We believe most fully, that men have a right to propagate their religious sentiments, if they confine themselves to argument and persuasion, and do not appeal to abuse, which is a crime in the eye of the civil law, it being manifestly against the peace of the community. We are well aware, indeed, of the mischiefs which may result from a free right to propagate religious, or rather *irreligious* sentiments of any kind. We know too well, what incalculable evil the publication of such books as the Age of Reason, the works of Boulanger, of Voltaire, and of La Mettrie have occasioned. We shudder at it as one of the most dreadful of evils, inasmuch as it takes hold on *eternity* and not merely on time. But dreadful as it is, we regard as a still greater evil, the power of civil government, or of any ecclesiastical tribunal, to suppress the publication of books at its option. To-day it may choose, as Frederic the Great did, and the French Directory after him, to circulate widely Voltaire, and D'Alembert, and Rousseau; or to-morrow it may spread wide the poison of some heresy lurking under a Christian name; while, at the same time, it inhibits all antidotes to these tremendous evils. The liberty of the press, *the unreserved liberty of it*, is in our view fundamental to religious liberty. If the press be, as it doubtless sometimes is, a most terrible instrument of doing evil; it is also one of the most efficient of all instruments in doing good. We would forever leave it open and free to do good; and if the liberty to do evil must come along with this, (and we do not see how it is possible to prevent it,) why then the friends of truth must trust to argument, to reason, to conscience, and to God, for triumph over

the powers of darkness. And this they may do, without peril to the cause in which they are engaged.

If I have not liberty to propagate my religious sentiments, provided I do it by reason, and argument, and persuasion, and with decorum, then I am not free. Liberty in its highest and most precious sense is denied me. As an immortal being, I look forward to the time when myself and all around me are to enter on the "recompense of reward," a final and eternal one. If I am serious in my religious views; if I am well persuaded that they are true, and this after repeated and protracted and patient examination; then I must be utterly destitute even of the spirit of common humanity, if I do not desire others to participate with me in this persuasion."

Professor Stuart says, "That the friends of truth must trust to arguments, to reason, to conscience, and to God." He does not say the whipping post, the pillory and the gallows. He laments with the strong feelings of a pious man the mischiefs resulting from propagating irreligious sentiments, but he holds like a wise man, that the evil, great as it is, is much less, than would be the consequences of an attempt to suppress by law, the propagation of sentiments, which the Legislature may consider irreligious. We regard as a great evil in any country the power of the civil authorities to suppress books on religion. The unreserved liberty of the press in promulgating sentiments respecting religion, we hold to be a vital principle of liberty, and essential to the support of religion. We view with horror the proceedings of those Governments, where nothing is allowed to be published, that does not conform to the established creed. The liberty of the press is essential to the preservation of religion itself. It is a fundamental principle of religious liberty. Without it there is no safety, for though a Christian Legislature might now proscribe none but infidel books, you might have an infidel legislature, which would proscribe all but infidel books, and suppress religion by law, on the same principle by which our Legislature undertakes to suppress irreligion by law. A wise man will consider what may happen, and extend his speculations beyond the smoke of his own chimney. Such is the philosophic view which Professor Stuart has taken of this question. He sees how power may shift from one sect to another, for he himself belongs to a sect, that has not now the predominant political power it once possessed in this Commonwealth. He looks into history and draws instruction from its lessons.

It becomes you, Gentlemen, and this Court, to profit by these lessons. You may fancy that you are doing God service by convicting the Defendant under this unconstitutional law ; but, if you begin now, what may be the consequences of the precedent, you will establish ? If you condemn a great heresy to-day, by a prosecution and a verdict in a court of law, you may condemn a less heresy, in the same way, to-morrow, and so on, until you find Judges and Jurors constituting an Inquisition upon men's belief, in all matters of religious concernment, and every deviation from the established creed rendered punishable. The plain, simple truth laid down in the Constitution, is, that the civil tribunals have no power, no right to enquire into or punish any errors of opinion in relation to religion. Were it not so, the ruling power might put down Christianity itself, if ever Christianity should happen to be in a minority here, as it has been under other governments. These are the principles which Professor Stuart holds, and he establishes his argument by the second article of the Bill of Rights. He does not mean to countenance a law to crush the deist or infidel, to-day, which to-morrow may be used to crush himself. His sentiments are as beautifully expressed, as his reasoning is unanswerable, and though I differ, by the whole heavens in religious creed, from this learned and eloquent divine, I cannot too warmly express my admiration for his noble defence of religious liberty, and for which I shall ever regard and revere him. He plants himself on the Constitution, which throws its protection alike over all sentiments relating to religion, and leaves all matters of belief, things between a man and his God, to the decision of the only proper tribunal, that which alone knows the heart.

Be cautious then, Gentlemen of the Jury, how you do, what may seem to be a good thing now, but which may lead to the most fatal consequences, adverse to the very religious cause, you may desire to sustain by your verdict. Beware of the first step in religious persecution, "t'will be recorded for a precedent." It was said in the Roman Senate, "*Omnia mala exempla ex bonis orta sunt*," all bad examples take their rise in good beginnings, in perverting justice from good motives and wresting the law to do a wrong for the purpose of promoting a good object. All religious persecutions, have had for their pretext, the desire to honor religion and punish error and heresy supposed to be crimes. This is the danger of establishing a bad precedent. We are in danger of being misled even by our virtues, and while we are seeking to advance

the cause of piety, are violating justice and endangering religion. Suppose you condemn this man to-day, for his disbelief of Christianity, you may doubtless feel consolation in the reflection that you have done your duty. Again you are summoned as Jurors, and the deistical sceptic comes next to the bar, to be tried for heresy, under this law, and he too is condemned. The disciple of Confucius, the Chinese philosopher is next arraigned, and the precedent of your verdict in this case is used effectually to condemn him, for not worshipping the God we worship. The pure minded Bramin, who may have come here, in the sincerity of his heart to teach us his religion, as we send missionaries to convert him to ours, is, in his turn, denounced for denying God, and the Christian faith; and upon the same precedent by which you convict this defendant, the Jury must convict the Bramin. The next is the Universalist. He denies the "final judging of the world," and is within the very words of the Statute of Blasphemy, and its punishments of the pillory and the gallows are his sentence. The Unitarian follows and another and another advances in the gloomy array, of the objects of religious intolerance. Last comes the author of this prosecution, who perhaps as a reward for his zeal in the cause of religion, will receive the favor promised to Ulysses in the cave of Polyphemus, of being the last victim to be devoured.

Gentlemen. We have already repeatedly referred to the Constitution of the United States. Let us take a glance at this instrument. Since the adoption of the Constitution of Massachusetts, the Constitution of the United States has been established as the Supreme Law of the land. That Constitution, we have seen, has not a word in it on the subject of religious or irreligious belief, except in the amendments which declare that Congress shall make no law to establish or prohibit religion. But the Constitution, as we have also seen, declares that Congress shall have power to establish a uniform rule of Naturalization. Congress have done so, and under the Naturalization laws citizens of other countries of every religion, and of no religion, are admitted to become citizens of the United States. The Pagan, the Mahomedan, the Jew, the Gentoo, the disbeliever, are all entitled to be admitted to the rights of citizenship. No qualification, as has been observed, is required, but a good moral character as the political orthodoxy; of attachment to the principles of the Constitution of the United States. If then, any man be admitted a citizen of the United States, under this law, is he not entitled to bring with him and

profess his religious sentiments? Has he not a right to propagate his opinions, as much as others who differ from him have to disseminate theirs?

The Statute of Blasphemy in this State, not only violates the Constitution of the Commonwealth, but it cannot stand, consistently with the Constitution of the United States, and the laws of naturalization under that Constitution. Do we mean to entrap men into becoming citizens, under the Constitution of the United States, which proclaims the principle of universal toleration, and when they come to reside within a particular State, shall we place them in the pillory, or on the gallows, for professing their sentiments relating to religion? Suppose a Mahomedan be naturalized. The Constitution asks nothing about his religion. He is admitted a free citizen of the United States, with all the legal rights of all other citizens. He then erects his Mosque, and preaches, there is but one God, and Mahomet is his Prophet, and he denounces our religion, as we denounce his. Has he not a right to do so under the Constitution and laws of the United States, and shall a law of this State hinder, molest, or restrain him? The Jew establishes his Synagogue, the Mahometan erects his Mosque, the Chinese sets up his Pagoda, the Pundit rears his Temple and each proclaims his God, and denies the God of every other religion. What are our rights as Christians? Are we tongue-tied and muzzled? Cannot we deny the God of the heathen? Cannot we ridicule their religion, and expose its worshippers to contempt? But if we can assail these opinions, deny the false Gods, reproach their prophets, as impostors or enthusiasts, and pronounce their books of religion the legend of falsehood, they must have a corresponding right under our Constitution to assail and impeach our religion in turn. The Mahomedan asserts the truth of the Koran, and denies the Bible. The Jew contends for the Old Testament as the only Holy Word of God, and denounces the New, as the work of men. Surely we have a right to expose the folly of his opinions, and fiddle his ceremonials, and sacrifices, and if so, he must have a right to oppose with equal zeal our baptism and sacraments. The moment we attempt to trammel others, we destroy our own rights to expose the errors of others and to maintain the truth of our own sentiments respecting religion. If it be not so, then is the Constitution a snare, instead of a protection. It invites the stranger to come here, to become a citizen, and yet he is to be exposed to punishment, if he dares to promulgate his opinions in matters of religion. Do we in

our writings, or in our pulpits, spare the Jews? Is it right that we should be deprived of the power of condemning any false religion, or the worshippers of false Gods? But if we claim the right to proclaim our sentiments, we must concede the same right to others, who are equally citizens with ourselves. We cannot under our Constitution deny the right of others to maintain their profession and sentiments respecting religion, without renouncing on our part our most precious privileges, for they must have the same right to promulgate their opinions, which we claim for ourselves. Nor need we fear the consequences. It is our boast that our Church is founded on a rock, that our religion will stand the test of enquiry, and that it cannot be shaken by all the winds and storms of Pagans, Mahomedans or Infidels.

How would you proceed in the case of a Jew, who should be arraigned for Blasphemy? The Jew believes that the Messiah has not yet come, yet he cannot preach that doctrine without violating this Act against Blasphemy, because in so doing he must deny, the authenticity of the whole of the New Testament, and thereby expose it to contempt. The Constitution guards against all such absurdities as these, by protecting all believers or unbelievers alike.

Gentlemen. I might extend these illustrations without end; showing the folly of any attempt to legislate upon men's faith in religious matters, for the theme is inexhaustible. Enough however, has been said on this head, to shew conclusively, as I think, that you cannot sustain the Constitutions of the United States and the State of Massachusetts, and this Statute together. One or the other must yield, and it becomes a most important matter for you to determine, on your consciences, whether you will be governed by the Constitutions of the United States and of Massachusetts, or by this Statute in direct violation of both these Constitutions.

Should you convict the defendant, the consequences of your verdict will not stop here. In defence of the principle of religious freedom, the Defendant, as I have already suggested, will carry the cause to the Supreme Court. Shall the same judgment be there rendered, and this Statute be enforced, the question may be carried to the Supreme Court of the United States.

Gentlemen. At whatever cost, at whatever hazard, the principle of religious liberty will be sustained by the people of the United States; they will not permit its infringement, though in the person of an individual whose sentiments may render him obnoxious. This ill judged prosecution, this trial and your ver-

dict, will go further to extend in this land, the evil, which it is proposed to check, than all the Defendant could write or say, in his life time. No good can come of it, you will unfortunately identify the cause of the Defendant, with the cause of religious persecution. You subject his opposers to the accusation of bigotry and an overbearing spirit of sectarian domination. You will make him a martyr and them Inquisitors. There may be now but a small speck in the horizon, but it may become a cloud charged with evil, and spread and burst upon our whole country. Such are the horrors of religious persecution, that men will fly for relief even to infidelity. Let a stop be put at once to the first approach of religious persecution, by your verdict. Put an eternal rebuke upon this prosecution and upon every prosecution of like nature. If you do not, the error, of those who have got up this prosecution may be remediless. The consequences may not light on their heads, but it may fall with vengeance upon the heads of their children, perhaps upon the whole nation.

Gentlemen. What induced and instructed the framers of the Constitution of our Commonwealth assembled to erect a political establishment, destined I trust to last for ages, to enact in the solemn Ordinance of the people, a prohibition to the Legislature and the Judiciary, which should be enrolled in letters of gold in our State House and Court Houses, against hurting, molesting or restraining any citizen in his person, liberty or estate, for his religious profession or sentiments? It was the warning voice of history, which has been well said to be philosophy teaching by example, which instructed our Revolutionary fathers, then engaged in a struggle for liberty, to lay broad and deep the foundations of a Republican government, and to establish the Christian and Republican principle of universal toleration, as a dyke to keep out a flood of evils and persecutions, on account of religious professions and sentiments, which had disgraced and desolated Europe and America and deluged other countries in blood. Was not this the lesson of history, to the framers of our glorious Constitution? Let us open its ample page, and we shall find it crimsoned with the records of cruelty flowing from the union of Church and State, and caused by the interference of Government, in matters of religion. The whole history of the Christian Church is a history of furious persecutions, either suffered by Christians, or inflicted by them on one another. The Founder of the Christian Religion died on the Cross of Calvary. Of his faithful disciples, it is believed all save one per-

shed by ignominious deaths on the scaffold, martyrs to their faith, and the victims of persecution. The first cry of mortal agony, heard after the crucifixion of Jesus Christ, was the dying exclamation of the martyr Stephen. His persecutor Saul, soon became converted to the religion which he had attempted to destroy by persecution, and in his turn drank to the dregs the cup of human suffering, and finally sealed his faith, by the death of martyrdom. In Rome in the days of Nero, the early Christians were held by the people in abomination, as a pernicious race, and subjected to the most horrible persecutions. Their reputation was falsely assailed. They were despitefully used, and man said all manner of evil against them on account of their religious professions or sentiments. The most ingenious and exquisite torments were devised for their affliction, and extermination. Many were covered over with pitch, then set on fire, and consumed by lingering and dreadful tortures, and placed at night to light up as torches the gardens of the Roman Emperor. In the reigns of succeeding Emperors, they were always in danger, and often exposed to a renewal of the terrors of religious persecutions. They were accused of atheism. And slanders, shocking to humanity were forged and circulated against a race of men, whose faith was pure and whose conduct exemplary, and whose history is unstained, till they obtained political power, and the corrupt and unholy union of Church and State, was consummated in the time of Constantine, the first Christian Emperor. The heart bleeds at the recital of the sufferings, to which the early Christians were exposed, on account of their religious professions and sentiments. It was a common thing to expose them in the Amphitheatre, to the fury of wild beasts, in order to gratify the intolerance of spectators more savage than the wild beasts, who were employed as the appropriate executioners in the cause of religious fanaticism. In a small town in Phrygia, where the faithful Christians had in the time of Dioclesian's persecution, gathered themselves into a church, it was surrounded by the soldiers, and set on fire, and the whole congregation, men, women and children perished in the flames. The prisons were filled with the Christian clergy; and racks, scourges, gibbets, wild beasts, and red hot beds of torture, were adopted, as engines of religious conversion against the Christians, which since the time of Constantine, and the union of Church and State, to the everlasting disgrace of the authors of such persecutions, have been employed with ten fold zeal and fury by Christians against their fellow Christians.

Gentlemen. We have hitherto seen the Christians in the day of adversity; suffering for conscience' sake, the most dreadful persecutions. We are now to look upon another prospect. We shall behold them in the time of prosperity becoming in their turn persecutors of one another. We shall find them dishonoring their name, and disgracing the character of their pure religion, renouncing the mild precepts of the Gospel, which proclaims the glad tidings of peace on earth, and good will to men, and disregarding the example of the Founder of the Christian religion. The Emperor Constantine became converted to Christianity, and the Christians rose from obscurity to glory, and became by the possession of the political power of the Roman Empire, the masters of the civilized world. From that time commences the history of the persecutions by Christians. From that day to this hour, human victims have been sacrificed on the altars of bigotry. The history of the Christian religion, since politics and religion became mingled together, is a tale of blood, and an awful warning to the present and all future ages, to beware of penal laws, and penal prosecutions on the subject of religion. The Christian religion is purity itself, but its simplicity has been defiled, by connecting with it the vices of politics, and suffering it to be polluted by the possession of avarice and ambition, which have given birth to the contentions, that have caused rivers of Christian blood to flow. These evils have resulted from the union of Church and State, the fountain whence flows all penal laws and prosecutions on the subject of religion, in disregard of the declaration of Jesus Christ "my kingdom is not of this world." I have said that all penal laws and prosecutions on the subject of religion are the offspring of the union of Church and State. The remark is correct, for until such an union was accomplished, and political power thereby obtained, there never were and never could have been either penal laws or penal prosecutions among Christians, on the subject of religious profession or sentiments.

How came this union of Church and State, so fatal to the peace and happiness of the Christian family, to have been formed? One of the first acts of Constantine, after his conversion, was to turn religion into a political engine, as it always had been in the Roman Republic and the Roman Empire, and what the Christian cause gained in power, it lost in purity. Among his first acts was a pollution of Christianity, by connecting political with religious interests. The Emperor Constantine declared at the Council of Nice, to the Bishops 'Ye are

Bishops of things within the Church, but I am Bishop as to externals." Here we find the Crown and the Mitre adorning the same head, and the Crook and the Sceptre, gracing the same hand. All the powerful potentates of the earth, Charlemagne, Henry the Eighth, the Protestant Princess Elizabeth, Peter the Great, the Emperor Napoleon, and even his late Majesty George the Fourth, have claimed and enjoyed the same prerogative and clerical preeminence. Charlemagne stated in a letter to the clergy "I have taken place among the Bishops, both as an auditor, and an arbitrator. We have seen and by the grace of God, decreed, that which ought firmly to be believed." Henry the Eighth claimed the title of "Sole and Supreme Head of the Church of England." His successors have enjoyed the same distinction, and since the Union of Scotland with England, the British Monarch, has been the Head of two Churches, the Kirk of Scotland and the Church of England, and swears in his coronation oath, to maintain Presbyterianism in Scotland, and Episcopacy in England, although the contentions of the two churches have caused a revolution, and brought one of his predecessors to the scaffold.

It is thus the union of Church and State, the fountain of penal laws and penal prosecutions for religious profession or sentiments, has been accomplished. It is thus, that the pure religion of Jesus Christ, has been adulterated, with the corruptions of politics, and made a "kingdom of this world." The effects of this union exist with immense power to this day in Europe, and have extended even to this distant land, the existence of which was not even imagined, when Constantine, in his Imperial robes, and with the terrors of the diadem of absolute power flashing from his brows, chose to ordain himself the "Bishop as to externals" of the meek and lowly followers of Jesus Christ. Are we not at this day, in this Court House, engaged in the trial of Abner Kneeland, on an indictment founded on an act of the Government, a penal law on the subject of religion? This assumption of the first Christian Emperor of a right, to unite the external affairs of government, with the "things within the Church" is the source of all penal laws and penal prosecutions among Christians respecting religious profession and sentiments, which have so extensively afflicted the human family, stained the pages of Christian history and filled the world with carnage. All these enormities have arisen, from the interference of Government in religious matters, with which Government has no legitimate right to interfere, and from the right claimed by various Governments,

to punish men for the profession of sentiments respecting religion, supposed according to the various creeds of those Governments, to be erroneous and heretical.

Let us follow on in our historical progress, and examine the consequences of this dangerous union of Church and State, whence is derived the power to establish penal laws, and to institute penal prosecutions for religious profession or sentiments. No sooner had this unholy union been consummated, than the great Trinitarian controversy commenced and raged among the Christians, between the Arians and the Athanasians. The Christian Church was rent in twain, by the fierce contention of the raging parties. The business of the world was interrupted, and men were anxiously awaiting the decision of the Council of Nice, on the important questions raised by this controversy. The Trinitarians prevailed. Arius was condemned, and has ever since been deemed in the Church a heretic, while his great opponent Athanasius has been revered and canonised. Arius was sentenced to exile for his religious profession or sentiments. But he soon found means, by the intrigues of the Court, to obtain the favor of the "Bishop as to externals," although his opinions remained condemned, by the decrees of the Council of the "Bishops of things within the Church." This union of Church and State invests the Government you see not only with the power to punish heretical profession or sentiments, but also with the power to forgive heresies.

The Arians were at first cruelly proscribed. But upon their return to favor with the "Bishop as to externals" they retorted persecution, with fury upon their former persecutors the Trinitarians, and by the magical power of this union of Church and State, the orthodox Trinitarians were rendered subject to persecution, by the heretical professors of the condemned Arian faith. Athanasius in turn was condemned and banished, and the history of the life of that distinguished man, displays the most sublime virtues of the Christian character, united with intolerant zeal. For the sake of his religion, he was sometimes compelled to seek a refuge in the cells of the hermits of Africa, where for years he was concealed from the world, till occasion called him forth, to vindicate before Princes and the people his doctrines. At other times, he was obliged, to seek a shelter among the clergy of the West of Europe. All Africa and Europe, were the scenes of his achievements and sufferings in the cause of religion, and he is immortalized in the memory of the faithful Trinitarians. The

Archbishop of Alexandria was five times driven by the storms of persecution from his Archbishopric, and twenty years of his life, were passed in banishment, or as a wanderer proscribed for his religious profession or sentiments. Blood soon began to flow, and in the first tumult at Constantinople, three thousand one hundred and fifty persons, lost their lives. In Rome the very temples of religion were often defiled by bloodshed, and it has been said, that "the face of Rome, renewed the horrid carnages of the massacres of Marius and the proscriptions of Sylla." In one of the religious commotions of Constantinople, the slaughter in the Church of St. Acacius was so dreadful "that the well before the church overflowed with a stream of blood, which filled the porticos and the adjacent courts." Such were the scenes in the Christian Church of the Roman Empire, during the reign of Constantine and his sons, at the period of the Arian and Athanasian dispute, and when the union of Church and State was in the full tide of experiment.

But this union was for a time interrupted by the accession to the Imperial Throne of the Emperor Julian, who proclaimed a decree of universal toleration. Yet such were the fatal divisions, which had resulted, during the union of Church and State in the reigns of the Christian Emperors, who preceded him, that the cause of the Christian religion became endangered by the quarrels among the Christians. The penal laws and prosecutions of the former reigns, had sunk so deep in the memory, and had so embittered Christian against Christian, that the hopes, of the apostate Julian were encouraged by those divisions, to destroy Christianity and restore the ancient religion of Greece and Rome.

The following is an account of the state of feeling, which then existed among the Christians, extracted from *The Decline and Fall of the Roman Empire*.

The Christians, who beheld with horror and indignation the apostacy of Julian, had much more to fear from his power than from his arguments. The pagans who were conscious of his fervent zeal, expected, perhaps with impatience, that the flames of persecution should be immediately kindled against the enemies of the gods; and that the ingenious malice of Julian would invent some cruel refinements of death and torture, which had been unknown to the rude and inexperienced fury of his predecessors. But the hopes, as well as the fears, of the religious factions were apparently disappointed, by the prudent humanity of a prince, who was careful of his own fame, of the public peace, and of the rights

of mankind. Instructed by history and reflection, Julian was persuaded, that if the diseases of the body may sometimes be cured by salutary violence, neither steel nor fire can eradicate the erroneous opinions of the mind. The reluctant victim may be dragged to the foot of the altar, but the heart still abhors and disclaims the sacrilegious act of the hand. Religious obstinacy is hardened and exasperated by oppression; and, as soon as the persecution subsides, those who have yielded, are restored as penitents, and those who have resisted, are honored as saints and martyrs. If Julian adopted the unsuccessful cruelty of Diocletian and his colleagues, he was sensible that he should stain his memory with the name of tyrant, and add new glories to the Catholic church, which had derived strength and increase from the severity of the pagan magistrates. Actuated by these motives, and apprehensive of disturbing the repose of an unsettled reign, Julian surprised the world by an edict, which was not unworthy of a statesman, or a philosopher. He extended to all the inhabitants of the Roman world, the benefits of a free and equal toleration; and the only hardship which he inflicted on the Christians, was to deprive them of the power of tormenting their fellow-subjects, whom they stigmatized with the odious titles of idolaters and heretics. The Pagans received a gracious permission, or rather an express order to open ALL their temples; and they were at once delivered from the oppressive laws, and arbitrary vexations, which they had sustained under the reign of Constantine and of his sons. At the same time, the bishops and clergy, who had been banished by the Arian monarch, were recalled from exile, and restored to their respective churches; the Donatists, the Novatians, the Macedonians, the Eunomians, and those who, with a more prosperous fortune, adhered to the doctrine of the council of Nice. Julian, who understood and derided their theological disputes, invited to the palace the leaders of the hostile sects, that he might enjoy the agreeable spectacle of their furious encounters. The clamour of controversy sometimes provoked the emperor to exclaim, "Hear me! the Franks have heard me, and the Alemanni;" but he soon discovered that he was now engaged with more obstinate and implacable enemies; and though he exerted the powers of oratory to persuade them to live in concord, or at least in peace, he was perfectly satisfied, before he dismissed them from his presence that he had nothing to dread from the union of the Christians. The impartial Ammianus has ascribed this affected clemency to the desire of fomenting the intestine divisions of the church; and the insidious design of undermining the foundations of Christianity, was inseparably connected with the zeal, which Julian professed, to restore the ancient religion of the empire.

The death of the Emperor Julian, who on a few occasions disregarded his own glorious decree of toleration, and cruelly

permitted persecution of the Christians, restored the Christian once more to power, and renewed the coalition of the Altar and the Throne. Persecutions were soon resumed. But the relation of particulars would occupy too much time. Let us come at once at the persecutions occasioned by the great schism of the Latin and Greek Churches, which still subsists, the head of the former being the Bishop and Pope of Rome, and that of the latter the Bishop and Patriarch of Constantinople.

The causes of this schism need not be related. Some of the cruel effects and persecutions, which it caused are all which now require our attention. In the twelfth century a tumult arose on this account at Constantinople. The popular fury, of the Greek Christians, was exerted against the Catholics. The following is an account of the tumult in the Decline and Fall of the Roman Empire.

The people rose in arms; from the Asiatic shore the tyrant despatched his troops and galleys to assist the national revenge; and the hopeless resistance of the strangers served only to justify the rage and sharpen the daggers, of the assassins. Neither age, nor sex, nor the ties of friendship or kindred, could save the victims of national hatred, and avarice, and religious zeal: the Latins were slaughtered in their houses and in the streets; their quarter was reduced to ashes; the clergy were burnt in their churches, and the sick in their hospitals; and some estimate may be formed of the slain from the clemency which sold above four thousand Christians in perpetual slavery to the Turks. The priests and monks were the loudest and most active in the destruction of the schismatics; and they chanted a thanksgiving to the Lord, when the head of a Roman cardinal, the pope's legate, was severed from his body, fastened to the tail of a dog, and dragged, with savage mockery, through the city.

The Catholics, in time avenged the persecutions, they had experienced from their Greek brethren. Under a pretence of a Crusade to recover the Holy Sepulchre, Constantinople was invaded by the Latin Christians, and plundered; and the City was exposed to the most unrestrained pillage, sacrilege and massacre. The thickest part of the City of Constantine, was for eight days and nights consumed by a conflagration, kindled by religious bigotry. The following is an account given of the sack of Constantinople, by the Latin Crusaders, in the celebrated work before referred to.

Pope innocent the third accuses the pilgrims of respecting in their lust, neither age nor sex, nor religious profession; and bitterly

laments that the deeds of darkness, fornication, adultery, and incest, were perpetrated in open day ; and that noble matrons and holy nuns were polluted by the grooms and peasants of the Catholic camp.

In the mean while, his desolate churches were profaned by the licentiousness and party zeal of the Latins. After stripping the gems and pearls, they converted the chalices into drinking-cups ; their tables, on which they gamed and feasted, were covered with the pictures of Christ and the saints ; and they trampled under foot the most venerable objects of the Christian worship. In the cathedral of St. Sophia, the ample veil of the sanctuary was rent asunder for the sake of the golden fringe ; and the altar, a monument of art and riches, was broken in pieces and shared among the captors. Their mules and horses were laden with the wrought silver and guilt carvings, which they tore down, from the doors and pulpit ; and if the beasts stumbled under the burden, they were stabbed by their impatient drivers, and the holy pavement streamed with their impure blood. A prostitute was seated on the throne of the patriarch ; and that daughter of Belial as she is styled, sung and danced in the church, to ridicule the hymns and processions of the Orientals. Nor were the repositories of the royal dead secure from violation : in the church of the apostles, the tombs of the emperors were rifled : and it is said, that after six centuries the corpse of Justinian was found without any signs of decay or putrefaction.

To such a fatal extent were these divisions among the Christians widened, that the City of Constantinople was lost by the Christians. The chief minister of the Greek Empire, declared, that he would rather behold in Constantinople, the Turban of Mahomet, than the Pope's Tiara or a Cardinal's Hat. His preference was soon gratified. The turbaned followers of Mahomet, soon scaled the walls and battered down the gates of the City, and the splendid church of St. Sophia built by Constantine and rebuilt by Justinian has been made a Mahometan Mosque. The most magnificent City in the world has been rendered the trophy of the valor of the united Musselmen, and a monument of disgrace to the Christians, divided by their contentions and persecutions, which lost to Christendom such an invaluable possession.

We now leave the City of Constantinople in the hands of the victorious infidels, wrested from the Christians in consequence of their religious dissensions and persecutions, and pass to Western Europe, almost every part of which has been whitened by the bones of those, who have been slain in battle, or have perished by the hand of the executioner, in consequence

of religious wars and religious persecutions among Christians, who are commanded by their religion to love one another, and to forgive the errors and offences of their brethren even seventy times seven.

Let us take a glance at Spain, where the Inquisition was founded, by Ferdinand and Isabella, who, with all her blind bigotry, has been famed, for the gentleness of her character, and the graciousness of her manners. We have discovered but a small part of the secrets of that terrible "prison house," the Inquisition. But the little which is known, causes the blood to freeze, and defies description. The atrocities of the Inquisition, and the religious fetes, the burning of heretics, spectacles which were attended by the chivalry and beauty and learning of Spain have filled Spain with blood and the world with sorrow. In the Netherlands then also under the power of Spain it is said by Grotius that a hundred thousand of the subjects of Charles the Fifth perished by the hands of the public executioner, by virtue of penal laws on the subject of religion, and in the reign of his gloomy and bigotted successor, both Holland and Spain were the scenes of the most bloody persecutions.

Let us now pass to France. We do not escape from horrors but we only change the scene, for here we find the bloody tragedy of the St. Bartholomew massacre enacted in which more than fifty thousand protestants were put to death in consequence of penal laws on the subject of religious profession or sentiments. In the City of Paris the streets flowed with blood, and many of the most distinguished patriots and heroes of France were massacred. The Admiral Coligni and five hundred men of rank, with ten thousand subjects of inferior condition, fell in one City, the City of Paris. In all the Provinces and the other Cities of the Kingdom, the same work of butchery was perpetrated, under the sanction of penal ordinances on the subject of religion. It was in beautiful France that Calvin was proscribed and banished, and his friends endured the death of martyrdom. At a later period of French history, we find the Edict of Toleration made by Henry the Fourth, repealed by Louis the Fourteenth, and penal laws on the subject of religion enforced with the utmost rigor against the Calvinists. The grandson of the minister of Henry the Fourth, who drew up the Edict of Nantz, was broken on the wheel for the offence of his ancestors. The gallies and the prisons were crowded with the victims of persecution, and tortures and executions covered the land with mourning. Five hundred thousand of the best citizens of

France, chiefly skilful artizans, the producers of the wealth of the country, were driven into exile, by penal laws on the subject of religion. They enriched by their emigration England and Holland by introducing into these countries the most valuable French manufactures, and a blow was given to the commercial and manufacturing interests of France, which has never been repaired.

If we look to Switzerland the retreat of the great reformer Calvin, we are filled with astonishment and disgust at the sight of the flames of persecution consuming the Unitarian Servetus, who perished at the stake, by the influence of Calvin, who was himself a fugitive from his own country, driven from his native land by the scourge of religious persecution.

We now pass to Holland and there we find that while the Catholics of France were persecuting the Calvinists, the Calvinists of Holland were putting to death some of the most illustrious patriots of their country, banishing Grotius and his friends, and persecuting with the utmost virulence, the Arminians, for their religious opinions.

If we pass to the British Isles, what a melancholy prospect do we behold in the history of Christian persecutions and in the multitude of penal laws on the subject of religion, with which the British Statute book is filled; and many of them written in blood. What a multitude of victims distinguished for public services, and private virtues, splendid abilities and eminent learning, have perished at the stake and on the gibbet, for their religious profession or sentiments. So great was the demand for fuel for the Lollards Pit, where the Protestant victims of penal laws and prosecutions on the subject of religion were burnt, that at one period, when the fury of persecution was at its height, the price of wood as is said in a letter to Erasmus became materially advanced in the vicinity of London. Neither age, nor sex, nor character, could save the devoted objects of religious intolerance, from tortures and death. Wickliff's doctrine was condemned by the council of Constance, which condemned his followers Jerome and Huss, who perished on the Continent in the flames. The remains of the great reformer Wickliff were disturbed in England, after he had been dead forty years, and his tomb was opened, and his bones taken out, burned to ashes, and the ashes with brutal and impotent fury thrown into a neighboring brook.

The cruelties in the time of Queen Mary would fill a volume with the recital of the sufferings of the reformers, the victims at Smithfield of penal laws and penal prosecutions on the subject

of religion. She shed blood enough to float, and committed enormities enough to sink her navy. Yet all the excesses of this Princess, and most of the excesses we have described proceeded from the desire to render man better, and to honor God. And this is the great mischief of religious persecution, the very virtues the best feelings of the heart become blind guides, and lead men to the commission of the greatest mischiefs, in the belief that they are doing the greatest good. Mary herself was from her cradle an object of jealousy and persecution, and the child of misfortune, by her mother's calamities, her father's crimes and her own religion. Yet Mary, in all things, save when her understanding was blinded by religious fanaticism, was as just, and as amiable, as Isabella of Spain, who founded the Inquisition, and upon her accession to the English Throne, called before her, as we are told, her Judges, and gave them in charge, the following direction, thus described in Blackstone.

And therefore it deserves to be remembered to the honor of Mary I. (whose early sentiments, till her marriage with Phillip of Spain, seem to have been humane and generous,) that when she appointed Sir Richard Morgan chief Justice of the common pleas, she enjoined him, "that notwithstanding the old error, which did not admit any witness to speak, or any other matter to be heard, in favor of the adversary, her majesty being party; her highness's pleasure was, that whatsoever could be brought in favor of the subject, should be admitted to be heard: and moreover, that the justices should not persuade themselves to sit in judgment otherwise for her highness than for her subject."

What shall be said of the violations of the duties of humanity, the rights of man, for centuries of bondage, in Catholic Ireland. As great barbarities have been perpetrated in that devoted country by the British Government on account of religion even in our day, as were committed in revolutionary France by the excesses of the French Revolution. Who shall tell the sad story of Ireland's wrongs? It shall be told you, by her gifted son, that child of genius, the orator Curran, who thus describes the wretched condition of the victims of religious oppression, in his native land.

Merciful God! what is the state of Ireland, and where shall you find the wretched inhabitant of this land? You may find him perhaps in a gaol, the only place of security, I had almost said, of ordinary habitation; you may see him flying by the conflagrations of his own dwelling; or you may find his bones bleaching in the

green fields of his country ; or he may be found tossing upon the surface of the ocean, and mingling his groans with those tempests, less savage than his persecutors, that drift him to a returnless distance from his family and his home.

We have passed from the East to the West of Europe. Let us now cross the Atlantic, and rapidly examine some of the events of the history of our own Commonwealth. We shall find that the evil spirit of religious persecution, has visited even this spot, separated by an ocean from the contagion of the vices of Europe. Yes, even in this land, we find the gloomy footsteps of the malignant demon of religious persecution. The Pilgrims, who came to the wilderness to enjoy the rights of conscience, denied it to others. In the Province Charter is the following provision, denying the liberty of conscience, to the Roman Catholics, who, in Maryland were the first proclaimers of universal toleration.

And for the greater ease and encouragement of our loving subjects inhabiting our said province or territory of the Massachusetts Bay, and of such as shall come to inhabit there, we do by these presents, for us, our heirs and successors, grant, establish and ordain, that for ever hereafter there shall be a liberty of conscience allowed in the worship of God to all christians (except papists) inhabiting or which shall inhabit or be resident within our said province or territory.

The early laws of Massachusetts are the bloody records of superstitious bigotry and cruelty, and they are the most flagrant violations of the rights of conscience. In one of the early Statutes, is a declaration aimed, at the ignorant Indian, that neither "ignorance or infirmity of human nature" should be an excuse for its violation. By this abominable enactment, the helpless babe, and the furious maniac, as well as the poor unenlightened Indian, were rendered subject to its bloody penalties. In others the punishment of banishment is denounced, on those, who should deny that Christ gave himself as a ransom for our sins, a doctrine which Dr. Channing considers as calumniating our Maker. Under the same penalty, the openly condemning or opposing the baptism of infants, and maintaining that there is any sin to be repented of in the regenerate, were prohibited. In some laws, the Quakers, the brethren of the philanthropic Penn, are pronounced a cursed sect of blasphemers and heretics, and those, who should bring them into the province, and even those who should entertain them or give them a cup

of cold water, were liable to grievous punishments. The Quakers were liable to be ignominiously carried from place to place and finally ejected out of the State. Their opinions were pronounced blasphemous and themselves rogues and vagabonds. Quakers taken up were subjected to be branded with the letter R. on the left shoulder and to be scourged. Upon a return into the State, they were liable to the punishment of death. In one of the laws, the denying, that men are justified by the death and righteousness of Christ, and the maintaining that men are justified by the perfection of their own works, is prohibited under heavy penalties.

Under the enactments of these superstitious laws written in blood, the most horrible persecutions raged in this Commonwealth. Many Quakers were scourged, imprisoned and banished. Among the victims, was a girl of about eleven years of age. The ears of several persons were cut off. A woman was placed upon the gallows, one of the punishments you will recollect, of this Statute against Blasphemy, on which the prisoner at the bar is indicted. At a subsequent period she suffered the punishment of death. A pilot was whipped for piloting some Quakers in a vessel. Some others were condemned to the same punishment for adhering to them, for persecution made the Quakers friends, and the people were moved with compassion that crowds attended them in the prison, and it became necessary to establish a guard to keep off the people. Indeed one of the Quakers told the Judges, that for every Quaker put to death, four came in his room. Similar penalties were practised upon the Baptists, and Roger Williams was driven as you know into banishment among the savages, and his friends were subjected to every species of most atrocious persecution. Let us pass on in the history of horrors in this State, which have been the results of bloody penal laws and prosecutions on the subject of religion. Nineteen persons were executed in my native town of Salem for witchcraft, and one of the chief agitators of this horrible delusion, was a most celebrated divine and scholar, and the Pastor of one of the Boston churches. His original letters, as I am informed, have been lately discovered in the town of Salem, among the papers of an ancient family. Those letters inflame the excitement in every possible manner, and the writer expressed the utmost solicitude to have all the news respecting the spectral evidence collected and sent to him, in order, as he said, that he might box it about among his church, because nothing could be done, either in politics or religion without an uproar.

Gentlemen. An old friend of mine belonging to that place, lately asked me, if it were not about time to get up the thing again, to revive the tragedy with new dresses and scenery. My friend is a shrewd observer of the signs of the times, and must have been endued with a sort of Scotch second sight anticipation of the present prosecution against the prisoner at the bar, he must have augured bigotry "at a distance," and scented the approach of superstitious intolerance in the taint borne on the rising breeze.

I do not find that the law against witchcraft, or the celebrated law mentioned by Governor Hutchinson in the third volume of his History of Massachusetts, punishing with death any Roman Catholic clergyman, who should come into this Commonwealth, has ever been repealed by the Legislature of this State. Upon the doctrine contended for in this case, that the old unrepealed laws remain in force till repealed by the Legislature, both these laws are now in force, as much as this Statute against Blasphemy. This law, punishing with death, a Roman Catholic clergyman, who should come into the Commonwealth, is referred to by Governor Hutchinson, in his relation of the story of the oppressions, which were practised upon the Neutral Roman Catholic French of Nova Scotia. It is a tale of sorrow, also told with all the force of truth and the eloquence of generous feeling, by Judge Haliburton in his elegant History of Nova Scotia. The settlements of this unfortunate people were broken up, by an expedition from New England, under the command of General Winslow, a brave and accomplished military genius of Massachusetts, who could not restrain his grief in the execution of his orders. Their houses were burned, their cattle and property were destroyed, and about three thousand were hurried on board transports, husbands sometimes in one ship, wives in another and children in a third, and brought and dispersed among the American colonies. Here they were reduced to beggary, and among other heart rending cruelties, they were deprived of the consolations of their religion, for death was the punishment of the Roman Catholic clergyman, who should come to console the living or comfort the dying. There has hardly been a more cruel case of oppression, except the expulsion of the Moors from Spain, and the practice of the infernal slave trade. In their own country, these people were independent and happy in the practice of morality, and the enjoyment of the consolations of their religion. They had among them, no lawyers, judges, sheriffs, no whipping post, no pillory, no gallows, no Statutes against Blasphemy, no penal

laws, no penal prosecutions on the subject of religion, and the country, on account of the innocence of its inhabitants, bore the name of the ancient Arcadia. From the summit of earthly felicity, they were at once plunged into the depths of misery, and one of them in the anguish of a wounded and broken spirit, told Governor Hutchinson that their case "was the hardest which had happened since our Saviour was upon earth." Some of these unfortunate men fled, by the light of the conflagration of their own dwellings, and at length, after experiencing every vicissitude of suffering, found rest for the soles of their feet, in a spot of the wilderness, as they believed, within the boundaries of the United States. There they founded the settlement of Madawaska, now becoming a place of absorbing political interest. There the remains of the Acadian race live, and as Mr. Kavanagh, the intelligent member of Congress from Maine, who was lately sent, by the Government of Maine, on a mission to this people, informed me, preserve the language, the manners and the innocence of their ancestors. They have no laws but the dictates of reason and conscience, and they revere the precepts and practice the duties inculcated in the gospel of Jesus Christ, which among this pure people is, as yet, unsustained, by the aid of the whipping post, the pillory, and the gallows.

Gentlemen. If this law be in force forbidding the coming into this State of a Roman Catholic Priest, under the penalty of death, we might have seen the venerable Dr. Matignon, and the amiable Bishop Cheverus, at this bar. We may yet see on trial for his life, the able, the persevering, the learned Fenwick, the present Bishop of Boston, whose life is now devoted, not only to the spiritual, but the moral and intellectual improvement of the great flock which God has committed to his care. Such are the splendid spectacles which may be exhibited to our people. We may see men, whose lives have been adorned with every Christian grace, and every moral virtue, standing at the criminal's bar, in trials involving questions of life or death, if the penal laws on the subject of religion, enacted in the dark days of ignorance, have not been abolished in this Commonwealth by our Bill of Rights.

Gentlemen of the Jury. This cursory historical examination must satisfy you, that all sects, powerful enough to excite jealousy have been persecuted, and that all sects are in danger of becoming persecutors, when the purity of religion becomes polluted, by an amalgamation with politics. It must satisfy you, that the sword of Government should never be called to

the aid of the Christian religion, which being "of God," does not need the support of penal laws and penal prosecutions. The sad lesson of history, furnished the solemn admonition to our fathers, in framing their Constitution of Government, to declare in the Bill of Rights, that no person should be hurt, molested or restrained in his liberty, person or estate, for his religious profession or sentiments, and thus to abolish for ever in this Commonwealth all penal laws and penal prosecutions on the subject of religion. Our wise fathers knew, that belief is not a matter of the will, and that a person cannot believe as he may choose, but must obey the law of moral necessity, and believe according to the convictions of his understanding. Would any one remain voluntarily in error? The supposition is a monstrous absurdity; for no earthly motive could operate, to induce the deliberate maintenance of erroneous opinions, in such an important matter as religion. Errors of opinion in religious affairs therefore cannot be crimes, and cannot be made the subject of penal laws and prosecutions. The framers of the Constitution determined that the first principles of justice should not be violated; that the rights of conscience and the freedom of opinion should not be disturbed, and that the bloody scenes of European and Colonial history, should not be acted o'er again in this Commonwealth, and therefore in erecting the Constitution, the noble political edifice, which rose by the will of the people, they determined to establish a firm bulwark of the rights of man. They proved to the world, that the blood of the American Revolution had not been shed in vain. They have put it out of the power of the Legislature to enact, and out of the power of Courts and Juries to enforce, penal laws on the subject of religion. They have displayed the wisdom of philosophers, the humanity of philanthropists, the expanded views of enlightened statesmen, and they deserve to be ranked among the noblest benefactors of mankind.

The principle of universal toleration, which the framers of the Constitution proclaimed in our Bill of Rights, is in accordance with the opinions of the most enlightened minds which have ever honored and improved the character of man. Let me read to you some glorious effusions of genuine feeling and eloquence in the British Senate, in a debate upon a proposition for the passage of a law, similar in its provisions to this Statute against Blasphemy, on which the prisoner at the bar now stands indicted. A glowing account of this debate, which took place in the House of Lords in 1719, is contained in the

following extract, from the History of Great Britain, by the Rev. Mr. Belsham.

A vehement controversy having recently arisen on the subject of the *Trinity*, chiefly in consequence of the learned tracts published in opposition to the established doctrine by the famous professor Whiston, the university of Oxford, in full convocation, resolved that the solemn thanks of that body should be returned to the earl of Nottingham for his most noble defence of the catholic faith, contained in his answer to Mr. Whiston's letter concerning the eternity of the Son of God and of the Holy Ghost. And at the instance of this theological statesman, elated no doubt by this flattering distinction, a bill was introduced into the house of peers for the suppression of blasphemy and profaneness; which enacted, that if any one spoke or wrote against the being of a God, the divinity of Jesus Christ or the holy Ghost, the doctrine of the Trinity, the truth of the Christian religion, or the divine inspiration of the Scriptures, he should suffer imprisonment for an indefinite term, unless, in a certain form prescribed, he should publicly renounce and abjure his errors. And by a clause in this bill, the archbishops and bishops within their respective jurisdictions, and the justices of peace in their several counties at their quarter-session, were authorised to summon any dissenting teacher, and to require his subscription to a declaration of faith containing the articles above enumerated; and upon his refusal, it was enacted, that he should be *ipso facto* deprived of the benefit of the act of toleration. The lords being summoned on the second reading of this bill (May 1721,) Dr. WAKE, archbishop of Canterbury, sealed his apostacy from the principles of civil and religious liberty, by moving to have it committed. Upon which lord Onslow rose, and declared, "that though he was himself zealously attached to the doctrines of the church of England, he would never consent to support even the truth itself by persecution; and he moved that the bill might be THROWN OUT." He was seconded by the duke of Wharton, who said, that, having been himself frequently accused of impiety and irreligion, he conceived that he could not more effectually vindicate his character from these imputations, than by opposing to the utmost a measure so repugnant to the spirit of Christianity. And taking a Bible from his pocket, he excited the amazement of the house, by reading with much gravity many passages of the sacred volume, containing exhortations to universal charity, meekness, and mutual forbearance. The earl of Peterborough, with uncommon boldness and happiness of expression, declared, that though he was for a parliamentary king, he was not for a parliamentary God or a parliamentary religion; and that if this bill were to pass, he should be ambitious of a seat in the conclave of cardinals, as more honorable than that which he occupied in the British house.

of peers. Dr. Kennet, bishop of Peterborough, protested that he NEVER would be concerned in the execution of such a law—and he earnestly hoped that his brethren on the bench would not concur in the establishment of a PROTESTANT INQUISITION. The lords Cowper and Townsend also spoke with much ability against this infamous and execrable bill; by which a pretended regard for the honor of religion was, as usual, made a pretext for the gratification of the most malignant passion—a bill which openly and impudently avowed and adopted the most profligate practices of the Romish church; and the principle of which, if once admitted, would lead to all the horrors of the rack, the stake, and the wheel. It was on the other hand supported by the earl of Nottingham, the lords Bathurst and Trevor, the bishops of London, Winchester, Lichfield and Coventry, and various others. But on a division, it was rejected by a majority of sixty voices against thirty-one.

At a later period of British history, in 1792, when Charles James Fox, that great light which illumined the whole sky while it remained above the horizon to cheer the friends of liberty was in the fullness of meridian glory, an attempt was made in the British House of Commons, to abolish all penal laws on the subject of religion. But in the corrupt and then unreformed House of Commons of that day, the generous effort failed. Mr. Belsham gives the following account of the attempt by Mr. Fox, to strike a blow for liberty.

Mr. Pitt having, in his speech on the motion for the repeal of the Test, avowed, in the most unequivocal and *unguarded* terms, the right of the dissenters to a full and complete toleration, Mr. Fox embraced the opportunity of bringing forward, in the course of this session, a motion for the repeal of those penal statutes, which, notwithstanding the existence of the Toleration Act, were still in force against those who in any manner impugned the doctrine of the TRINITY. He shewed, from a specification of authentic facts, that these laws were far from being a mere dead letter; not to mention the hatred and opprobrium which they were the means of creating. Such was the wretched bigotry fostered and cherished by these laws, that a bishop of the church (Dr. HORSELEY) had not scrupled in a recent publication to declare “that Unitarianism being *heresy*, even the moral good of the Unitarians was sin.” Mr. Fox, expressed his ardent wish to extirpate heresy by *fire*—not indeed in the old mode of burning heretics, but by burning all those statutes which formed the code of persecution. Mr. Pitt appeared on this occasion somewhat embarrassed, and rested his opposition chiefly on the disuse and oblivion into which the acts in question had fallen, and the dangerous alarm which might be excited by the repeal—disclaiming, in warm terms, the principles and character of a persecutor. Mr. Fox, in reply, remarked, that he knew not

how to distinguish between a persecutor and an advocate for penal laws in matters of religion, which was the precise definition of the term. As to the general alarm, of which Mr. Pitt was apprehensive, it was the bitterest satire upon the spirit of his own administration, to suppose the temper of the public so fatally changed as not to endure the repeal of laws so execrable, and till a recent period, so generally the subject of execration. Mr. Fox's motion was rejected by a majority of 79 voices.

Mr. Fox was the champion of the American cause, in the time when the British King, Lords, Bishops, and Judges, the law Christianity Judges, were attempting to enslave our people. This great orator and profound statesman you see, was also the champion of liberty and universal toleration. This friend of the rights of man, could he have carried through Parliament a bill to abolish all penal laws on the subject of religion, would have adopted in framing it, the explicit expressions of our Constitution, no subject shall be hurt, molested, or restrained in his person, liberty, or estate, for his religious profession or sentiments.

You shall now hear the opinion of the Apostle of liberty, the illustrious Author of the Declaration of American Independence, in favor of universal toleration. Mr. Jefferson in his Notes on Virginia, thus utters the emotions of his pure heart, and the mature reflections of his powerful and cultivated understanding, on this subject.

"The error seems not sufficiently eradicated, that the operations of the mind, as well as the acts of the body, are subject to the coercion of the laws. But our rulers can have no authority over such natural rights only as we have submitted to them. The rights of conscience we never submitted, we could not submit. We are answerable for them to our God. The legitimate powers of government extend to such acts only as are injurious to others." "Constraint may make him worse by making him a hypocrite, but it will never make him a truer man. It may fix him obstinately in his errors, but will not cure them. Reason and free enquiry are the only effectual agents against error. Give a loose to them, they will support the true religion, by bringing every false one to their tribunal, to the test of their investigation. They are the natural enemies of error, and of error only. Had not the Roman government permitted free enquiry, Christianity could never have been introduced. Had not free enquiry been indulged at the æra of the reformation, the corruptions of Christianity could not have been purged away. If it be restrained now, the present corruptions will be protected and new ones encouraged. Was the government

to prescribe to us our medicine and diet, our bodies would be in such keeping as our souls are now. Thus in France the emetic was once forbidden as a medicine, and the potatoe as an article of food. Government is just as infallible too when it fixes the systems of physics. Galileo was sent to the inquisition for affirming that the earth was a sphere; the government had declared it to be as flat as a trencher, and Galileo was obliged to abjure his error. This error however at length prevailed, the earth became a globe, and Descartes declared it was whirled round its axis by a vortex. The government in which he lived was wise enough to see that this was no question of civil jurisdiction, or we should all have been involved by authority in vortices. In fact, the vortices have been exploded, and the Newtonian principle of gravitation is now more firmly established on the basis of reason, than it would be were the government to step in, and make it an article of necessary faith. Reason and experiment have been indulged, and error has fled before them. It is error alone which needs the support of government. Truth can stand by itself. Subject opinion to coercion; whom will you make your inquisitors? Fallible men; men governed by bad passions, by private as well as public reasons. And why subject to its coercion? To produce uniformity. But is uniformity of opinion desirable? No more than of face and stature. Introduce the bed of Procrustes then, and as there is danger that the great men may beat the small, make us all of a size, by lopping the former and stretching the latter. Difference of opinion is advantageous in religion. The several sects perform the office of a censor morum over each other. Is uniformity attainable? Millions of innocent men, women and children, since the introduction of Christianity, have been burnt, tortured, fined, imprisoned; yet we have not advanced one inch towards uniformity. What has been the effect of coercion? To make one half the world fools, and the other half hypocrites. To support roguery and error all over the earth. Let us reflect that it is inhabited by a thousand millions of people. That these possess probably a thousand different systems of religion. That ours is but one of that thousand. That if there be but one right, and ours that one, we should wish to see the 999 wandering sects gathered into the fold of truth. But against such a majority we cannot effect this by force. Reason and persuasion are the only practicable instruments. To make way for these, free enquiry must be indulged; how can we wish others to indulge it while we refuse it ourselves."

Gentlemen. Is there no danger in mixing the ingredients of a poisoned chalice, that it may hereafter be commended to our own lips, and we ourselves compelled to drink the bitter draught of persecution to the dregs? We wish to live and hope to die in the Christian faith, and that our children may

walk in Christian peace and liberty, without being exposed to molestation and persecution. We should beware then, how we establish the precedents of penal prosecutions on the subject of religion, which sooner or later have returned to plague the authors of such precedents, such violations of the rights of man. But it may perhaps be said, there surely can be no danger of retaliation, for the defendant and his friends are too few and weak, to excite alarm. So have thought and said all who have wielded the scourge of religious persecution. The unbelievers in Christianity may now be few, but from the constant alarm sounded from the pulpits and in religious publications, it seems that there is some apprehension, lest their strength may be increased. We have been told of the dreadful scenes of the French Revolution. Was not infidelity in power, and were not those excesses new manifestations of the danger of the union of political, with either religious or irreligious fanaticism? But the blood shed by the infuriated infidel zealots of France during the short period in which they ruled, did not produce one such tragedy, as the St. Bartholomew massacre. Indeed the persecutions of other ages were the precedents by which the Infidels of France attempted to justify their own flagitious enormities.

I again ask, is there no danger, in allowing ourselves to persecute those, to whom we are opposed, because they have not the strength to make resistance? Have we not seen the greatest power arise, from beginnings most inconsiderable in political strength. The Christian flock were but one hundred and twenty in number at the gathering of the faithful, after the Shepherd had been stricken. Now they are numerous as the leaves on the trees of the forest, or the stars in the firmament, and the sands on the sea shore. Their religion is spread to the uttermost parts of the earth. The pure Christian worship is now offered up around the globe, and ever cheered by the light of the sun; for when that glorious luminary seems to us to sink in the West, and our evening prayers are rising, he appears to other parts of the world, to be rising from the East in the mild radiance of morning glory, and the orisons of other climes are ascending. But perhaps, it will be said, God has prospered and speeded the work of the propagation of our religion, because it is the religion of truth. Let not this delightful reflection deceive us into a mistaken security, let us not lay this flattering unction to our souls, for it should be recollected that God in his wisdom, has permitted a false religion, to spread more extensively, than the Christian reli-

gion among men. The founder of that religion, was not born till about six hundred years after the Christian era. He had nothing to sustain his impositions but the influence of his majestic beauty of person, his enthusiastic and commanding eloquence, and his matchless valor. Yet he was crowned with conquest in his life, and has secured in the estimation of a larger portion of the human family, than is numbered in the hosts of Christendom, the reputation of a sage, the renown of a hero, and the glory of a prophet. His followers have obtained the possession of Egypt, where the family of Jacob was sheltered from the famine, and where Joseph and Mary and the child Jesus were protected from the persecution of Herod, and where Moses the law giver of the Jews, was born, preserved and educated. They hold in their hands the Holy City of Jerusalem, the spot where once stood the Temple of Solomon, and the seat of the Holy Sepulchre. The mountain whence the Commandments were declared is in their power, and the Hermits of Mount Sinai, when France sent her magnificent expedition to Egypt, brought down from their monastery, their charter of toleration, signed by Mahomet, to be countersigned by the hand of Bonaparte. They have wrested from us, the magnificent City of Constantine, and the church of St. Sophia, the most elegant edifice ever raised for Christian worship, is now the most magnificent mosque in the Mahometan Empire. The victorious Musselmen spread with rapidity along the northern coast of Africa, passed the Straits of Gibraltar and conquered Spain. The mountains did not long impose a barrier to their conquests, for the Conquerors of Spain soon rushed with the force of a torrent from the summit of the Pyrenees upon the plains of France. In one of the battles the Christians were defeated with such dreadful carnage that in sorrow and despair it was declared that "God alone could reckon the number of the slain." The Mahometan warriors passed the Rhone, and were in their victorious march upon Paris, when they were met and gloriously repulsed by Charles Martel, the hero of France and the last earthly hope of Christendom. Who can imagine what might have been the consequences, if the event had been adverse to the Christian arms, in that terrible conflict on the blood stained plains of France, on the issue of which the fate of the Christian cause, so far as it can depend on human events, seemed to be suspended. A philosophical historian thus speculates on this grand event, which checked the progress of the Saracen arms, then threatening to subdue all Europe. He says, "A victorious line of march had been pro-

longed above a thousand miles, from the Rock of Gibraltar, to the banks of the Loire, the repetition of an equal space would have carried the Saracens to the confines of Poland, and the highlands of Scotland; the Rhine is not more impassable than the Nile or the Euphrates, and the Arabian fleet might have sailed without a naval combat into the mouth of the Thames." Perhaps, Gentlemen, had the banner of the Crescent triumphantly advanced in that fight, and the ensign of the Cross fallen back in discomfiture, the discoverer of America might have planted in the New World the standard of the false Prophet of Mecca, and a Mahometan Judge might this day have been sitting in your place, and condemning Christians, the victims of penal laws and penal prosecutions on the subject of religion. Nay more, as if it were to rebuke the presumption of man, in assuming to avenge with his feeble arm, the wrongs against Heaven, and to enforce the Scripture truth, that man cannot find out the Almighty unto perfection, God in his mysterious wisdom has allotted the best portion of this earth's heritage, "the clime of the East," and "the land of the Sun," to the Infidels for a possession. Thus is it described in Byron's glowing verse.

Know ye the land of the cedar and vine,
Where the flowers ever blossom, the beams ever shine;
Where the light wings of Zephyr, oppress'd with perfume
Wax faint o'er the gardens of Gul * in her bloom;
Where the citron and olive are fairest of fruit,
And the voice of the nightingale never is mute;
Where the tints of the earth, and the hues of the sky,
In colour though varied, in beauty may vie,
And the purple of Ocean is deepest in die;
Where the virgins are soft as the roses they twine,
And all, save the spirit of man, is divine?
'Tis the clime of the East; 'tis the land of the sun.

* The rose.

Gentlemen. We behold how the true religion, which seems to have been left, since very early times, to human exertions, for its propagation, has risen, from small beginnings, to a mighty power. We behold also, how a false religion, by the zeal and perseverance of its professors, has been spread more extensively than even Christianity among men, and how much it has endangered, even in Europe, the Christian ascendancy. Should not the reflections which this historical review cannot fail to excite, teach us, that from the weakness, even of a false reli-

gion, may arise very great political power, and earthly strength. Does not the voice of all history instruct us, never to trample upon our opponents in religion, because we do not dread their present strength? False doctrines we see are permitted to exist among men, and infidelity may be allowed to stalk in our land, as in revolutionary France, and persecution will accelerate the day. Let us not then in this day of our power, establish dangerous precedents, and set a fatal example, by which our opponents may in case they shall obtain strength, retaliate upon our children the heaviest calamities. Let it not be in the power of infidels persecuting our children, to whom we will teach the pure doctrines of the Gospel, and to whom we will give a charge to teach to their children the same faith; let it not be in the power of infidels, who may persecute them for their religion, to reproach them with our example, and justify their violations of humanity and justice, by our proscriptions! You, Gentlemen, will do as you please; but as an American citizen, I protest against this prosecution and it shall never be brought up in judgment against me or my posterity.

Gentlemen of the Jury. I am now worn down by the labours of this defence, and am almost ready to say, I have done. But I cannot close without returning my thanks, to the Counsel for the Commonwealth for his many courtesies, to the Judge for his constant indulgence, and to you for your patient and respectful attention. One word more, and we part. If the defendant shall fall in this prosecution, a nobler victim will fall with him, for the blow which is aimed at the prisoner at the bar, is a fatal blow at the Constitution of his country.

Note. A.

The position, which is maintained on page 27, respecting the construction to be given to the language of a defendant in a criminal prosecution for a libel, may seem to be impugned by some decisions of Lord Mansfield and Lord Ellenborough, both of whom were as determined enemies to the freedom of the press, as ever sat upon the English Bench. These decisions however merely determine, that where there is a plain, obvious meaning of the defendant's language, it shall be taken in preference to a forced meaning which in fact is not a meaning. These Judges do not relax in the least degree, the rule, that in libel prosecutions, as well as in all other Criminal prosecutions, every reasonable doubt shall be thrown into the scale of the defendant.

Note. B.

The following passage was omitted on page 87, and it is a part of the quotation from Tucker's Blackstone, and follows the other part quoted on that page.

"Mr. Swift in his system of the laws of Connecticut tells us, that the English common law, had never been considered as more obligatory there, than the Roman law had been in England."

ERRATA.

On page 17, 40th line from top,	for <i>prayers</i>	read prayer
" 18, 6th	" for <i>in</i>	" to
" 27, last line	" for <i>them</i>	" those
" 33, 23d	" for <i>doctrines</i>	" doctrine
" 36, 21st	" for <i>the</i>	" this
" 38, 22d	" for <i>is</i>	" be
" 40, 1st	" for <i>have</i>	" has
" 51, 37th	" for <i>persecution</i>	" persecutions.
" 73, 35th	" for <i>all</i>	" are
" " "	" for <i>agree</i>	" agreed
" 76, 34th	" for <i>opinions</i>	" opinion
" 77, 34th	" for <i>Horseley</i>	" Horseley
" 94, 29th	" for <i>in</i>	" to
" 97, 14th	" for <i>ninth</i>	" sixth
" " 15th	" for 578	" 398.
" 98, 35th	" for <i>or</i>	" nor
" 101, 1st	" for <i>is</i>	" are
" 102, 41st	" for <i>as</i>	" and
" 103, 24th	" for <i>for</i>	" of
" 105, 38th	" for <i>Mahomedan</i>	" Mahometan
" " 13th & 32d	" " "	" "
" 106, 14th	" " "	" "
" " 38th	" for <i>shall</i>	" should.

